The New Haven Convention of 1778.

The Boundary Line between Connecticut and New York.

The Ecclesiastical Constitution of Yale College.

THREE HISTORICAL PAPERS

READ BEFORE THE NEW HAVEN COLONY HISTORICAL SOCIETY,

BY

SIMEON E. BALDWIN.

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THE NEW HAVEN CONVENTION OF 1778.

By Professor Simeon E. Baldwin.

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In the elaborate paper by Dr. Bronson, upon Connecticut Currency, Continental Money, and the Finances of the Revolution, which is contained in the first volume of the transactions of this Society, a full statement is given of the various issues of paper money by the United States and by this State, during the progress of the Revolutionary War. From June 22d, 1775, to November 29th, 1779, the Continental Congress authorized the emission of circulating currency of various kinds to the amount in all of over $240,000,000. Some of it was receivable for taxes; some bore interest; some was made convertible into government bonds, or, as they were then called, "loan-office certificates." The different States were, at the same time, issuing paper money of their own; though with a less lavish hand. That of Connecticut, during this period, amounted to but about one per cent. of the aggregate emissions of Continental bills.

It would have been strange indeed if these bills, issued by a Congress of delegates from a number of different Colonies, never before united in any other way than as common dependencies of the British Crown, and not yet venturing to declare

their independence, had succeeded in establishing themselves in the confidence of the public. So early as January, 1776, Congress found it necessary to recommend the punishment, as public enemies, of all who refused to receive its paper in payment of debts,* and the laws which, at its solicitation, the States were induced to pass, making the Continental currency a legal tender, while ruinous to existing creditors, only tended to depreciate it still further, as regarded future transactions. Nothing could now be bought, except at prices entirely disproportioned to the actual specie value of the article. Congress, representing the United Colonies, was the largest purchaser, and had nothing to sell. It, therefore, felt most keenly this fall in the purchasing power of its promises to pay.

On October 2d, 1776, Congress voted

"That it be recommended to the several States to make legal provision to compel the furnishing of necessary supplies and assistance to the quartermaster general of the Continental army, on reasonable terms, for the public use." †

A few days later, on Oct. 31st, 1776, this resolution was passed:

"Whereas it has been represented to Congress, that sundry inhabitants of these United States, to keep supplies from the army, or promote their own interest, have purchased considerable quantities of clothing, and refuse to dispose of the same, unless upon extravagant or unreasonable terms;

Resolved, That it be recommended to the assemblies, conventions, councils or committees of safety of the several States, forthwith to take suitable measures for the obtaining for the use of the army, such necessary articles, as being thus engrossed in their respective States, cannot be otherwise immediately procured, allowing to the owners reasonable prices for the same; and that laws be provided in each of the States, for effectually preventing monopolies of necessaries for the army, or inhabitants of the same." ‡

The attempt to limit the prices of commodities in any particular town or State naturally had the effect of driving away from it all trade, which was susceptible of a transfer. Con-

* Journals of Congress, ii, p. 21.
† Journals of Congress, ii, 396.
‡ Journals of Congress, ii, 439.

gress did not venture, itself, to attempt to legislate for the whole country as to the regulation of prices; but it did the next thing. It began, early in 1777, to urge upon the States, the necessity of concerted action in this matter.

On Jan. 9th, 1777, Congress "earnestly recommended to the executive powers of Georgia, South Carolina, North Carolina, Virginia, and Maryland" the purchase of provisions for the army, and also that they should "limit the prices of the said articles," and should "confer together by epistolary correspondence, or such other manner as they may think best, in order to pursue some general and beneficial plan, in which they may be mutually useful to each other."*

The sessions of Congress during the next few days were principally spent in discussing "the means of supporting the credit of the Continental currency;" and on Jan. 14th, the result of their deliberations took the shape of a preamble, denouncing "the pernicious artifices of the enemies of American liberty to impair the credit of the said bills by raising the nominal value of gold and silver;" and a resolution, asking the several States to inflict upon all who offered, asked or received, upon any sale, or negotiation for a sale, more in bills, than they would offer, ask, or receive in gold, such penalties and forfeitures as would "prevent such pernicious practices;" to make Continental money a legal tender; to provide sinking funds for redeeming their respective proportions of the whole issue; and to lay taxes for the future large enough to meet their share of the annual public expenditures."†

On Christmas day, 1776, a meeting of three delegates from each of the four New England States had been held at Providence, to consult as to what measures could be taken to uphold the credit of those States, and provide for their defence from invasion. ‡

This body sat until January 2d, 1777, and one of the principal results of their deliberations was a recommendation to the

* Journals of Congress, iii, 15.
† Journals of Congress, iii, 20.
‡ 2 Arnold's Hist. of R. I., 390.

Legislatures of the States represented, to pass laws, limiting certain *maximum* rates, which the Convention particularly specified, for wages, the necessaries of life, and indeed most ordinary articles of consumption. Farm hands were not to have over three shillings fourpence a day, in summer; for the best butter over ten pence a pound must not be asked; for potatoes (then beginning to come into common use), "commonly called Spanish potatoes," of the best sort, not over two shillings a bushel; and so on through a long list of prices, which then, doubtless seemed as high to our great-grandfathers, as they now seem low to us.

The minutes of their proceedings were transmitted to Congress, and, being received on Jan. 28th, 1777, together with an explanatory letter from Gov. Trumbull of Connecticut, formed one of the principal subjects of discussion for several weeks.*

On Feb. 15th, 1777, Congress passed a resolution giving a general approval of their action, and recommending the other States to follow the lead of New England in such legislation in this direction, as would best "remedy the evils occasioned by the present fluctuating and exorbitant prices" of labor, manufactures, internal produce, and imports from foreign parts.

To give this a more definite form it was further "recommended to the Legislatures, or in their recess to the Executive powers of New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, "to appoint commissioners to meet at York town in Pennsylvania on the third Monday of March next, to consider of and form a system of regulation, adapted to those States, to be laid before the respective Legislatures of each State, for their approbation," and that "for the like purpose, it be recommended to the Legislatures, or Executive powers in the recess of the Legislatures, of the States of North Carolina, South Carolina, and Georgia, to appoint commissioners to meet at Charleston in South Carolina, on the first Monday in May."†

* Journals of Congress, iii, pages 37, 38, 45, 48, 52, 61, 63, 64.

† Journals of Congress, iii, 64, 65.

These were the first of a series of conventions of commissioners or delegates from groups of neighboring States, which were called sometimes by Congress, and sometimes by one of the States interested, during the years from 1776 to 1781, for the purpose of strengthening the public credit. The following is believed to be a full list of those which were both called, and held:

States represented.	Place of Meeting.	First day of Meeting.
New Hampshire, Massachusetts Bay, Connecticut, and Rhode Island and Providence Plantations, ...	Providence, R. I.,	Dec. 25, 1776.
New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, ...	York, Pa.,	March 26, 1777.*
New Hampshire, Massachusetts Bay, Connecticut, Rhode Island and Providence Plantations, and New York, ...	Springfield, Mass.,	July 30, 1777.†
New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, and Pennsylvania (Delaware invited, but not represented), ...	New Haven, Conn.,	Jan. 15, 1778.
New Hampshire, Massachusetts Bay, Connecticut, Rhode Island and Providence Plantations, and New York, ...	Hartford, Conn.,	Oct. 20, 1779.‡
New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia (New York invited, but not represented), ...	Philadelphia,	Jan. 1780.§

* 3 Hildreth's Hist., 182.

† Journals of Congress, vol. iii, 334, 458, 529; 1 N. H. Col. Hist. Soc. Papers, Dr. Bronson's Essay, p. 91; Hinman's Hist. Coll., 468, 569. A copy of the journal of this convention is in the State Archives of Connecticut.

‡ State Archives of Conn., MSS. vol., 15 Rev. War; 19 id. 282, 285; 3 Hildreth's Hist., 298; Journals of Congress, v, 406, 421.

§ 6 Bancroft's Hist., 343. This was called together by the Hartford Convention. State Archives, 8 Rev. War, 271.

States represented.	Place of Meeting.	First day of Meeting.
New Hampshire, Massachusetts, and Connecticut (Rhode Island appointed a Commissioner, but he failed to attend),	Boston, Mass.,	August 3, 1780.*
New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, and New York,	Hartford, Conn.,	Nov. 2, 1780.†

The Providence Convention was called together, at the invitation of Rhode Island;‡ that at York, by Congress; that at Springfield by Massachusetts; that at New Haven by Congress; the first at Hartford by Massachusetts;§ that at Philadelphia by the one at Hartford; that at Boston by Connecticut;‖ and the second at Hartford by that of Boston.**

This last Hartford convention advised that another be called to meet at Providence, of representatives from New England and New York, at such a time in the next year as Gov. Trumbull might fix. He designated April 12th, 1781, as the day, and Commissioners were appointed by Connecticut and Rhode Island; but the other States did not respond, and the convention failed, for want of a quorum.†† In June of the same year, another convention, representing the same group of States, was held at Providence, but not for the same objects as those of the preceding years.

The Springfield convention of 1777 was satisfied that the plan of regulating prices by law had proved a failure in New England; where it had been faithfully tried, by the advice of the convention at Providence of 1776. They, however, attributed this failure in great part to the fact that no similar laws existed out of New England, which necessarily led to the

* 6 Bancroft's Hist., 343. Its proceedings, edited by F. B. Hough, were published in a small folio, at Albany, 1867.

† 3 Hildreth's Hist., 360. The first day may have been Nov. 15th. See State Archives, 19 Rev. War, 13, 250, 282, 285.

‡ 2 Arnold's Hist. of R. I., 390. § Ibid., 445.

‖ 9 Rhode Island Colonial Records, 153, 161.

** Hough's Edition of the Proceedings of the Boston Convention, p. 52.

†† 9 R. I. Colonial Records, 378; Conn. State Archives, 19 Rev. War, 250.

diversion of trade to the other States. Congress still had faith that, if only some universal plan of this character could be carried out, in all the States, the Continental bills would stop sinking.

On November 22d, 1777, therefore, Congress issued its call for a convention at New Haven (and for others of delegates from the Southern States to be held at Fredericksburgh, Va., and Charleston, S. C., but which, in fact, were never held), "in order to regulate and ascertain the price of labor, manufactures, internal produce, and commodities imported from foreign parts, military stores excepted; and also to regulate the charges of innholders."* At the same time, the respective States were requested to proceed immediately ("the spirit of sharping and extortion, and the rapid and excessive rise of every commodity, being confined within no bounds"), to adopt some temporary system to regulate the prices of provisions and military supplies, until the convention could agree on some general plan.

The policy of regulating prices by law was not new to Connecticut. As early as 1641 we find this order of the General Court:

"Forasmuch as the Court haveing lately declared their app'hensions to the Country, conserneing the excesse in wages amongst all sorts of Artificers and workemen, hopeing thereby men would have bine a law unto thēselves, but finding litle reformation therein, The said Court hath therefore

Ordered, that sufficient able Carpenters, Plow writs, Wheelewrits, Masons, Joyners, Smithes and Coopers shall not take above 20d. for a dayes worke frō the xth of March to the xith of October, nor above 18d. a day for the other p'te of the yeare, and to worke xi howers in the day the summer tyme, beside that w^{ch} is spent in eateing or sleeping, and ix howers in the wynter."

Further provisions were made as to other trades, and the hire of teams, and whoever gave or took greater wages than thus prescribed was warned that he must "abyde the censure of the Court."†

This statute was repealed after a short time,‡ but was afterwards replaced by one more comprehensive, which came down

* Journals of Congress, iii, 532.

† 1 Col. Rec. of Conn., 65, 66. ‡ Ibid., 205.

unchanged from early Colonial times to the Revolutionary period. It ran thus:

"AN ACT FOR THE PREVENTING OF OPPRESSION.

Whereas Oppression is a Mischievous Evil the Nature of Man is prone unto; and that no person may Oppress and Wrong his Neighbour by taking excessive Wages for Work, or unreasonable Prices for such Merchandize and Commodities as shall pass from Man to Man,

It is Enacted by the Governor, Council and Representatives, in General Court Assembled, and by the Authority of the same. That if any person or persons shall offend in any of the said Cases, he or they shall be punished by fine or imprisonment, according to the quality of the Offence, as the Court before whom he or they are presented and complained of, upon Lawful Tryal and Conviction, shall determine.

And for a certain Rule of proceeding for the Relief of such as shall Complain of Wrong done unto them by Oppression,

It is further Enacted by the Authority aforesaid, That when any person or persons shall make complaint of any Merchant, Shopkeeper, Trader, Victualler, or of any Handycrafts-man or Trades-man, as Smiths, Shoe-makers, Carpenters, Joyners, Taylors, Weavers, or other Trades-man or Laborer whatsoever, the Authority to whom such complaint shall be made, shall appoint and call before him or them, two or three of the same Occupation or Trade the person is who vends the Merchandize or Commodity, and is complained of for Oppression; which two or three persons shall be under Oath, to be by the said Authority administered unto them, to give their judgment and opinion concerning the price of such Goods and Commodities sold, or labor done, which opinion and judgment shall be the ground of legal conviction: And when the penalty does not exceed *Forty Shillings*, any one Assistant or Justice of the Peace, shall be and is hereby impowered to hear and issue the same; and when the penalty is above *Forty Shillings*, the case shall be Tryed by the County Court, *Provided*, No penalty for such offence shall exceed threefold the wrong done thereby; the same penalties to be and belong, half to the Complainer, and the other half to the Poor of the Town wherein the Offender dwells; and all Charges arising upon such Complaint shall be paid by the Offender or Offenders."*

At the May session of the General Assembly in 1776, an Act was passed, amending this ancient statute so as no more to require the appraisers to be men of the same occupation or trade with the person complained of, "which mode of trial is found

* Acts and Laws of His Majesties Colony of Connecticut in New England. Revision of 1702, p. 91.

inadequate to remedy the evil intended."* The necessity of such an amendment shows that there must have been, since the recent emissions of paper money, frequent and unavailing resort to this law.

At the October session, in the same year, Continental bills were made a legal tender, and penalties were prescribed against all who sought to discriminate between them and specie, in fixing prices.†

These measures proving unavailing, a special session of the Assembly was called in November, 1776, which fixed the rates of compensation for day labor, and all the ordinary necessaries of life.‡ The preamble of this Act gives a graphic picture of the state of the markets:

"Whereas the rapid and exorbitant rise upon the necessaries and conveniences of life, in this Day of public Calamity and Distress, is chiefly occasioned by Monopolizers, the great pest of Society, who prefer their own private Gain to the interest and safety of their Country; and which, if not prevented, threatens the Ruin and Destruction of the State," therefore, etc.

Another Act, passed at the same time, authorized the Governor, with the advice of the Council, to forbid, by proclamation from time to time, the exportation of any articles, which he might deem it expedient thus to keep within the State.§

After legislation of this character, Connecticut was fully prepared to adopt the recommendations of the Providence Convention of the New England States; a report of which was made by the Connecticut delegates, January 4, 1777, to the adjourned session of the Assembly held at Middletown.‖ An Act was accordingly passed forthwith in Connecticut, as well as in the other New England States, fixing the rates of prices agreed upon at Providence. The preamble of that portion of the statute relating to imports from foreign countries, will best illustrate the spirit in which it was conceived:

* Session Laws of Connecticut, p. 422.

† Ibid., 434.

‡ Ibid., 437. 1 New Haven Colony Historical Society Papers, Dr. Bronson's paper, p. 90.

§ Session Laws for 1776, p. 439. ‖ Hinman's Hist. Coll., 262.

"And whereas considering that Goods in general imported have of late (owing to the unbounded Avarice of some Persons), been sold by Wholesale at the exorbitant Advance of five and six Hundred per Cent. from the prime Cost, and retailed out at the unreasonable Profit of Forty and Fifty per Cent., or more, in Addition thereto; which has been the Occasion of great Oppression, especially to the poor Consumer; and considering that notwithstanding the great Risque of a Voyage to and from Europe, the high rate of Insurance, the Difficulty of procuring Articles suitable for the Market, the Loss upon those exported, the increased Expenses and Length of the Voyage, and the real Necessity of Importing many Commodities from thence; Wherefore, to correct and rectify such Exorbitances, and yet to allow the Importer a reasonable Profit, and also to act in Conformity with the other New England States in this Particular,"* it is enacted, etc.

This Act was accompanied by a repeal of the old statute as to "oppression," as well as the recent law for the regulation of prices. A few days later another Act was passed to prevent taverners from demanding "unreasonable and extravagant prices for victuals, forage, liquors, and refreshments."†

The loyalty of our people generally, in accepting these measures, appears on all our old town records. At a town meeting in Norwich, for instance, held April 7, 1777, it was

"*Voted*, strictly to adhere to the laws of the State, regulating the prices of the necessaries of life; and we do resolve with cheerfulness to exert our best endeavors within our sphere, to support the honor of that good and salutary law."‡

In New Haven, at a town meeting held January 30, 1777, the following action was taken:

"Whereas the Gen^{ll} Assembly of this State, at their Sessions in Middletown, on the 18th day of December last past, by an Act, did regulate the Prices of a Number of Articles in said Act enumerated, and whereas it appears to this Town that it is of the utmost consequence to the Community in general and to this Town in particular, y^{t} said Act should be immediately carried into execution,

Voted, therefore, that this Town will, by every legal measure endeavor to have the Directions of sd. Act strictly complied with.

"This Town being fully sensible y^{t} it is the duty of Every Friend to his Country to sell and dispose of the articles enumerated in the Act of

* Session Laws of 1776, p. 450.

† Session Laws of 1776, p. 454.

‡ Caulkins' History of Norwich, 243.

Assembly (fixing the prices of Labour, etc.), at the prices at which they are therein stated—Therefore, *voted*, y^t those of us who have any of them, beyond what we want for our own consumption, will readily and cheerfully sell them, either for money or produce, at the prices in sd. Act stated, and that we will assume all persons who shall not do the same, enemies to this Country, and treat them accordingly—Provided such person is properly convicted thereof, before the Committee of Inspection of this Town, whom we impower to take Cognizance of such offence."*

The execution of the provisions of the law as to taverners' prices was left by the Act to the civil authority, selectmen, constables and grand jurors of each town, who were to fix the charges for their own town, and furnish a list of them to each taverner and victualer, to be set "in fair View on the Walls of the Bar, or most frequented Room" of the inn.

In New London, where the statutes were then printed, by "Timothy Green, Printer to the Governor and Company," the town authorities hastened to act under the new law, and on Jan. 21, 1777, regulated the prices to be charged as follows:

"Punch at 2s. per bowl; Flip at 15d. per mug; Toddy at 15d. per bowl; Madeira wine at 6s. per quart; Rum at 6d. per gill; Geneva at 9d. per gill; Brandy at 9d. per gill.

Victuals at dinner, common at 9d.—An extraordinary dinner not to exceed 18d.

Horsekeeping per night (hay being at 60s.), at 1s., 6d. and in proportion.

Oats at 6d. per bushel; 2d. per mess, and in proportion.

Lodging at 4d. per night."†

At the May session, 1777, a new and higher scale of prices was fixed for most articles of provisions,‡ but at a special session, in August, of the same year, both of these Acts to regulate prices were repealed, pursuant to the recommendations of the Springfield Convention. This repeal was rendered necessary by the failure of New York and the other States out of New England, to adopt the Providence system.§

* Town records for 1777, p. 69.

† From a printed list in the possession of C. J. Hoadly, Esq., State Librarian.

‡ Session Laws of 1776, p. 462.

§ Ibid., 474. 3 Hildreth's History, 227. Hinman's Hist. Coll., 589.

In the following October, a new experiment was tried by "An Act to encourage fair Dealing and to restrain and punish Sharpers and Oppressers." The preamble declared that

"All Conspiracies, and other Acts to enhance the Prices of Merchandize or any of the necessaries and conveniences of Life, bought and sold, are at all Times immoral, oppressive to the Poor, and pernicious to the State, and more especially so at the present Time, by Reason of the Interruption of Commerce and great Demand for many Articles, occasioned by the War.*

The remedy then provided was to forbid any person to buy more of any of the necessaries of life, than he might need for his own personal use and that of his family, unless specially licensed to trade in them; and no license was to be granted except to those "known to be of good Character for Probity, public Spirit, and Friends to the Freedom and Independence of the American States."

It would appear that there were at least some malcontents, bold enough to speak out, in opposition to this course of legislation, and call it by the names it deserved, for at the August session, 1777, it was represented to the Assembly that a pamphlet, entitled "A Discourse upon Extortion," was in press at Hartford, "containing many insulting reflections upon civil government, leading to sedition, bloodshed, and domestic insurrections;" whereupon the sheriff was ordered to seize all the sheets in the hands of the printer, and deliver them to the States' Attorney.†

At this time the actual depreciation of Continentel money in Connecticut was such that one silver dollar was worth three paper ones.‡

In January, 1778, the Assembly appointed three commissioners to represent Connecticut in the New Haven Convention.§ With the exception of Delaware, all the other States which were embraced by Congress in the call, were prompt in responding.

* Ibid, 476.
† Hinman's Hist. Coll., 287.
‡ State Archives, 21 Rev. War, 14.
§ Id., 8 Rev. War, 271.

No report of the membership or of the proceedings of the Convention is to be found in our State archives, and none has ever been published, in any form, so far as I have been able to learn. Its sessions were private, and the *Connecticut Journal*, then, as now, published in New Haven, contains no mention of the Convention, except a brief reference to its adjournment. Among the papers of Roger Sherman, there is, however, a list of the commissioners, and full minutes of their final action, to which I am indebted for most of what I am about to say of the doings of this body.

It is strange that so little notice has been taken of these different Conventions by our historians, or by writers upon the finances of the Revolution. They exercised an important, though perhaps not always a happy influence, over the social and financial affairs of the United States during its first and feeble years; and though their powers were only advisory, those of the Continental Congress itself were, in truth, little more. The recommendations of these Conventions to the States, it may be added, were generally adopted with more readiness and confidence than those which came from Congress direct.

The roll of the members of the New Haven Convention, who were in actual attendance, was as follows:

New Hampshire—Jonathan Blanchard, Nathaniel Peabody.
Massachusetts Bay—Thomas Cushing, Robert Treat Paine, Elisha Porter.
Rhode Island and Providence Plantations—William Green, Jabez Bowen.
Connecticut—Roger Sherman, William Hillhouse, Benjamin Huntington.
New York—William Floyd, Comfort Sands, Peter Curtenius, William Denning.
New Jersey—John Cleves Symmes, John Neilson.
Pennsylvania—James McDuvel, James Cunningham.

The material of the Convention, as thus constituted, was most respectable. Three of the members, Paine of Massachusetts, Sherman of Connecticut, and Floyd of New York, had been among the signers of the Declaration of Independ-

[illegible] Sherman and Nelson of [illegible] Convention [illegible] United States.

[illegible] Massachusetts was one of the first to assert [illegible] and to tax themselves. [illegible] Five of which [illegible] Federal Court to [illegible] with reference to a con- [illegible] the repeal of the Stamp Act.* Two [illegible] Massachusetts Conven- [illegible] towns, met to [illegible] Great Britain to overawe [illegible] In 1774 and 1775, he was with Robert Treat Paine, one of the Massachusetts delegates to the Continental Congress. In 1775, he was chosen the first Lieutenant-Governor of Massachusetts under her new Consti- [illegible]

Robert Treat Paine of Massachusetts, a great-grandson of Gov. Robert Treat of Connecticut, had been, from the first, one of the leading spirits in fanning and strengthening the public sentiment of his Colony in favor of resistance to the tyrannical measures of the British ministry. He was elected a delegate to the first Continental Congress, and was annually re-elected until 1778, after which year he was almost continuously in public life, in his own State, until 1805. He was a man of strong convictions and imperious disposition. For many years he was on the Supreme bench of Massachusetts, retaining this office, after deafness had rendered any remarks made in an ordinary tone of voice unintelligible to him; although he was quite unconscious of his infirmity, and would reprove the counsel before him, with more emphasis than courtesy, for their indistinct and mumbling manner of speaking. After being addressed in this way, on one occasion, Fisher Ames left the Court room, remarking that he should

* Barry's Hist. of Mass., 288.
† Wells' Life of S. Adams, ii. 176, 261.

never come before Judge Paine again, without a bludgeon in one hand and a speaking trumpet in the other.*

Gen. Wm. Floyd of New York was a member of the Continental Congress throughout the war; then for years an influential member of the New York Legislature; and a member of the first Congress under the present Constitution of the United States.† He was also one of the New York Commissioners at the Hartford Convention, above mentioned, of October 20th, 1779. Though not distinguished as a public speaker, New York always regarded him as one of her most substantial citizens,—one weighty in counsel.

Of the New Hampshire delegates, Peabody was a member of the Continental Congress of 1779, and Blanchard was afterwards a member of the Congress under the Confederation.

Neilson of New Jersey was a member of the Continental Congress of 1778.

Benjamin Huntington was a member of the original Council of Safety of Connecticut appointed in 1775, and William Hillhouse was added to it by the General Assembly in May, 1776. This Council was to act with the Governor in all matters relating to the public service, when the Assembly should not be in session.‡ Both were also repeatedly elected as members of the Congress of the Confederation, and Judge Huntington was afterwards a representative in the first Congress held under the present Constitution.

Sherman, of whose general public career it is unnecessary to speak before this audience, had been, by appointment of the Governor and Council of Safety, one of the Connecticut Commissioners to the Springfield Convention of July 30th, 1777.§

The character of the work of the Convention had been prescribed for it by Congress, in the terms of its call. It was not to consult as to the best plan to adopt for sustaining the public credit. The Springfield Convention, held the preceding sum-

*Sanderson's Biography of the Signers of the Declaration of Independence, ii, 232.

†Sanderson's Biography, iv, 136, 144.

‡Hinman's Historical Collection, 210, 325.

§Ibid., 468.

mer, several of the delegates to which were also present at New Haven, had met for that purpose, and had come to a wise result; recommending the repeal of the laws to regulate prices, the imposition of heavier taxes, the cessation of further issues of paper, and the gradual withdrawal of those already made. But the task to be accomplished at New Haven was simply and solely to fix new price-lists for the ordinary articles of daily consumption, and new rates for wages, which should be ratified by State legislation, so as to govern as the uniform standard throughout the eight northernmost States.

At the time when the Convention met, it took, according to Pelatiah Webster, four dollars in Continental bills to buy one silver dollar, at Philadelphia. The table of comparative values of specie and paper, incorporated in the Resolves of Congress of June 8th, 1780, gives a more favorable ratio, making the currency in Jan. 1st, 1778, only 31½ per cent. below par; but this table is admitted to have been prepared with the view of glossing over the real nature of the financial discredit into which the nation so early fell.* In Connecticut, however, owing to its distance from the seat of government and from the government printing-press, the depreciation of the Continental paper was less rapid than in States further south. Our Legislature in 1780 adopted a table of comparative values from month to month during the few preceding years, which makes the depreciation in January 1st, 1778, the same as that stated by Congress. The original draft of this Act is in our State Archives, and appears to be in the hand-writing of Roger Sherman.†

The Convention was organized by the choice of Mr. Cushing of Massachusetts as President, and Henry Daggett of New Haven, a recent graduate of Yale College, as Secretary, and continued in session from Jan. 15th to Feb. 2d, 1778. They spent nearly a fortnight in comparing views and deciding upon the prices to be fixed, and then appointed "Roger Sherman, Robert Treat Paine, Nathaniel Peabody and Benjamin Huntington, Esqrs., to prepare and report a proper draught of the proceedings of this Convention."

*State Archives, 21 Rev. War, 14. †Id., 5 Finance, 178.

The story is told, I believe, of the Rev. Dr. Bellamy, that he once said that, whenever he was invited to take part in an ecclesiastical council, he always wrote out the result beforehand, and carried it in his pocket, because it saved so much trouble for the council. It would seem that this Committee must have prepared themselves for their labor, in much the same way, for on the next day, "Thursday, January 29th, the Committee brought in their report, which being read and considered, was agreed to, and is as follows, viz:"

When we see *self love*, that first principle planted in the humane breast by the all-wise Creator for our benefit and preservation, thro' misapplication and corruption perverted to our destruction, we feel the necessity of correcting so pernicious an error, and directing the operation of it in such a manner as that our self and social love may be the same.

The application of this remark to the present state of our public affairs is obvious.

The free-born Inhabitants of America oppressed by the Tyranny of Great Britain found it necessary for the support of their Liberties to declare themselves *Independent;* to support that *Independence* it was necessary to raise and maintain an expensive Army and to issue large emissions of paper Bills to defray the expences. Upon the support and success of this Army under *God* depends the whole we are contending for; and on the Credit of our currency depends immediately the support of our Army; when, therefore, the principle of *self love* impels the individuals of a Community to exact and receive for their services or commodities such prices as exceed that proportion of prices at which the Army was raised and established, and to set no other bounds to their demands than what the necessity of the times will suffer them to receive, and to withold and conceal their necessary commodities unless their demands are complied with, Is it not evident that their *self love* and attention to their supposed self interest have exceeded their true bounds, and tend not only to the destruction of the welfare of the community but also of the individual?

Can a man in any reasonable view be considered as a Friend to the American cause, who continually practices, and with all his efforts supports, such conduct, which if adopted by the Community in General must work the destruction of that cause? Can the officers and soldiers support themselves by their pay at the present high prices of the necessaries of life? Can the community possibly afford to advance that pay, seeing the Bills with which they are paid must hereafter be redeemed in silver and Gold at the expressed value? Can all the other expences be supported at so high a rate? Must not, therefore, the rates of all expences be reduced to their original standard? And do not, therefore, those persons who by their Clamours, opposition and Engrossing labour to obstruct

the reducing of prices give evident proof that they are in fact enemies to the very cause they otherwise pretend to support? do such persons well consider what is always said of the men who zealously professing Christianity live in continual practice of the breach of its precepts?

Induced by such like reflections, and feeling their obligations to superintend the welfare of the American States, the Honorable the American Congress by their Resolves of Nov. 22d last, premising the necessity of reducing the quantity of circulating medium in order to support its value, have recommended to the several States, in the strongest terms, to raise the sum of Five Million dollars by taxes, and to refrain from further emissions of Bills of credit, to cancel all the Bills emitted by particular States, to support the war by taxes and loans, and for an immediate remedy of the exorbitant evil complained of, have recommended to the States of America, in three divisions, to appoint Commissioners to regulate and ascertain the price of labour, Manufactures, Internal Produce and Commodities imported from foregin parts, Military Stores excepted, and also to regulate the charges of Innholders.

The Commissioners, therefore, of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey and Pennsylvania have met in Cōvention at New Haven on the 15th of January, in pursuance of said requisition of Congress, and while attending to the injunctions of their Commissions, have not been insensible of the principle upon which an opposition to the regulation of prices by law is founded, and though this measure is executed by them in compliance with the requisition of the Honorable Congress, yet as the Government of America is not only founded on the good will of the People, but by the wisdom and sincerity of its administration recommends itself to their understanding and approbation, they thought it not amiss to address this measure to the feelings and apprehensions of the Inhabitants.

It is evident that those principles on which such an opposition is founded were fully considered by the Grand Council of America; that they viewed the reducing the quantity of circulating medium, by stopping the currency of the Bills of the particular States, and supporting the future expences by taxation and loaning, as the essential remedy, and as what in time must work the desired effect, especially among a virtuous people; but that our present exigences require an immediate reduction of prices, which by those who are actuated by no better principle than contracted *self love* may be considered as infringing the principles of Trade and Liberty, is nevertheless a salutary measure in conjunction with the others, and practiced by all the States.

To the several Legislatures of the American States, therefore, is now sounded the loudest calls, which the voice of true *self love* and self defence can utter, immediately to exert themselves to relieve the Inhabitants of that plea for high prices, the undue quantity of money, by stopping the circulation of their State's money, by levying large taxes, and assessing them with such equality as to admit of the highest taxes practicable.

To the Inhabitants of these States this voice clearly announces the necessity of the above measure, and of regulations of prices by Law.

Why do we complain of a partial infringement of liberty, manifestly tending to the preservation of the whole? Must the Lunatic run uncontrolled, to the destruction of himself and Neighbours, merely because he is under the operation of medicines which may in time work his cure? And indeed without the use of those medicines will the confinement cure him? Must we be suffered to continue the exaction of such high prices to the destruction of the common Cause, and of ourselves with it, merely because the reduction of the quantity of our currency may in time redress the evil? And because any other method may be complained of as an infringement of liberty? Is there any alternative but the existence and increase of those evils before recited on the one hand, or the regulation of prices by Law on the other, till they become regulated by the reduction of the currency?

Will the present inhabitants of this earth, or generations yet unborn, by any representations be persuaded to believe that a person or people are duly penetrated with the importance of their liberties, who will not comply with and exert themselves to support such a system of expedients as are required by Congress?

The said Commissioners therefore being duly impressed with the importance and wisdom of the said Resolves of Congress, and taken collectively and coöperating together, of their efficacy to produce the desired end, and having the firmest confidence in the several Legislatures represented in this Convention, that they will, forthwith, without any delays or pretentions whatsoever, stop the currency of all the Bills of credit by them emitted, small change under a dollar only excepted, and call them in by loans or taxes, and emitting no more bills on their own credit, small change excepted, exert themselves to support the war by taxes and loans, and that the Good People, the Inhabitants of these States, will remember their first love of Liberty, and their solemn, fervent and voluntary engagements to support the same with life and fortune, and that they will exert themselves, that this whole system of regulations shall be effectually carried into execution to the support of the cause, have agreed to the following rates of prices to the articles hereafter mentioned.

The Commissioners, very desirous of accommodating this regulation as much as may be to the convenience of immediate practice, have stated the prices much higher than any one will suppose they ought to be; they have endeavored to avoid too great a revulsion, expecting when the judicious and spirited exertions of the several Legislatures shall have reduced the quantity of the medium, that there will not only be no occasion for this regulation, but that the prices will naturally fall from the high rates at which we have stated them to their original standard.

From this regulation certain articles of foreign production are excepted, being in the opinion of the Commissioners equally necessary for

[illegible] and the charge [illegible] and uncertain, bringing [illegible] articles as to [illegible]

[illegible]

I. [illegible] Mechanicks and others [illegible] advance [illegible] what [illegible] several States [illegible]

II. [illegible] Land transportation [illegible] dollar for the [illegible] all expenses [illegible]

III. [illegible] produce not [illegible] be estimated [illegible] they were usually [illegible] in the year [illegible] Lamb, Veal, small [illegible] Vegetables, the prices of which [illegible] if they shall judge [illegible]

[illegible] all kinds of Woollen [illegible] Felt Hats, Wire and Wool-cards [illegible] the rate of [illegible] cent per cent. [illegible] several parts of the States [illegible]

[illegible] Goods, Wares and Merchandize [illegible] into these States by Captors [illegible] the rate of one Continental dollar, [illegible] of such Goods in Europe exclusive [illegible] from the Importer or Captor, excepting [illegible] kinds of Woollen and Linen Goods [illegible] Drugs and Medicines, Duck of all [illegible] Allum, Brimstone, Felt Hats, [illegible] Wool and Cotton-cards, Naval [illegible]

[illegible] Linens, Shoes, Stockings, Hats [illegible] for the Army, heretofore imported [illegible] and taken by order of authority, for [illegible] at the above rate, with the addition [illegible] carriage, if any there be, to the [illegible]

VII. [illegible] at the first Port of delivery [illegible] these States, shall not exceed the [illegible]

Good West India Rum, per Gallon by wholesale,	£0	18s.
Good merchantable N. England ditto,		12
Best Muscovado Sugar per hundred lbs.,	10	0
All other Sugars in usual proportions, according to quality.		
Best Molasses per Gallon by wholesale,		9
Coffee not exceeding ⅓ of a dollar per lb. by the hundred weight.		
Good Merchantable Whiskey, per Gallon,		7
Geneva, Brandy and all other distilled Spirits not herein enumerated, per Gallon not exceeding 12s.,		12

VIII. That no Trader, Retailer or Vender of foreign Goods, Wares or Merchandize shall be allowed more than at the rate of 25 per cent. advance upon the price such Goods, wares or merchandize are or shall be first sold for by the Importer or Captor, agreeable to this regulation, with the addition only of cost and charges of transporting them by land at the rate of five-twelfths of a dollar per mile for transporting twenty hundred neat weight from the first port of delivery to the place where the same shall be sold and delivered by retail.

IX. That Innholders be not allowed more than 50 per cent. advance on the wholesale price of all liquors or other foreign articles herein stated and by them sold in small quantities, allowing as aforesaid for charges of transporting. And all other articles of Entertainment, refreshment or Forage not to exceed 75 per cent. advance on the prices the same were at in the same places in the year 1774.

X. That the articles enumerated in the following Table shall not be sold or disposed of at higher prices, in the respective States and places therein named, than at the rate set down and affixed to such articles respectively, with the addition only of the stated allowance for land carriage, if any there shall be. The same being estimated in lawful money at six shillings per Dollar.

The first column shows the price in New Hampshire.

The second in Massachusetts Bay and Rhode Island.

The third Connecticut, New York, New Jersey and Pennsylvania.

Merchantable Wheat, Peas, and White Beans, per Bushel,	13s.	0d.	12s.	0d.	9s.	9d.
Merchantable Flour, per gross weight,	36		33.	4	27	
Rye or Rye Meal, per Bushel,	7	6	7		6	6
Indian Corn, per Bushel,	5	6	5	3	4	6
Oats, per Bushel,	3	9	3	6	3	
Pork well fatted, from 100 lbs. to 150 lbs. per Hog, per lb.,		8		7½		5½
Ditto, weighing from 150 to 200,		8½		7½		6
Ditto, weighing more than 200 lbs.,		9		8		6½
Best American made Cheese, per lb.,		10		10, 9		9

The following prices alike in all the States aforesaid:

Best Grass fed Beef, Hide and Tallow, per lb.,	35s.	0d.
and in proportion for inferior quality.		
Best stall fed ditto, with Hide and Tallow,	48	
inferior in proportion, till July 1st.		
Good Butter per lb., by the Firkin or Cask,	1	3
per lb., in small quantity,	1	4
Raw Hides, per lb.,		4½
and other skins in usual proportion.		
Good, well tann'd Sole Leather, per lb.,	2	
Skins and all curried leather in due proportion.		
Men's neat's leather Shoes, common sort,	12	
Calf skin ditto, best quality,	15	
Women's and Children's in proportion.		
Bloomery Iron at place of manufacture,	£48 per ton.	
Refined Iron do.	56 do.	
Pig Iron, where made,	18 do.	
Best American manufactured Steel, fit for Edge Tools, per lb.,	2s.	0d.
Common Steel, made in America,	1	4

XI. *Resolved*, That it be recommended to the several Legislatures of these States that they cause the Laws they may enact to carry these resolves into execution to be in force from and after the 20th of March next with such penalties annexed as they shall judge effectual.

XII. Whereas it may be greatly subservient to the spirited and effectual execution of this plan of regulation of prices that each State represented in this Convention, should be assured that the others of them had stop'd the circulation of the Bills emitted on their respective Credits, and had resolved to carry all the other requisitions of Congress expressed in their resolves of Nov. 22 into execution. Therefore, *Resolved*, That the said States be desired as soon as may be, after the receipt of this Report, to write circular Letters to the other States, giving an account of their Resolutions and proceedings thereon.

Signed per order, THOS. CUSHING, *President.*

Attest, HENRY DAGGETT, *Secretary.*

A letter was also drafted and agreed to, addressed to Congress, under date of Jan. 30, 1778, to be signed by the President, and to accompany a copy of the results of the deliberations of the convention. In this they allude, somewhat pointedly, to that feature of the Continental bills in which they resembled the United States treasury notes or "greenbacks," with which we have been familiar since 1862, their omission to state when their promise to pay so many dollars to the bearer, is to be fulfilled. The passage is as follows:

"Before we conclude, we beg leave to mention that the public have never yet been notified when the continental Bills are to be Redeemed, except the two first emissions; their being at an uncertainty about this matter has been complained of as having a tendency to lessen the credit of the Bills, whereas, if they were to be ascertained when they were to be redeemed, especially if it was at a short period, it would give them a confidence in the money and greatly establish its currency."

Our General Assembly met on Feb. 12th, 1778, a few days after the adjournment of the Convention, to act on their recommendations. Sherman was present as one of the Assistants.* Governor Trumbull, being detained at home by illness, gave his views on the subject, in a letter to the General Assembly, dated Feb: 11th, 1778. He says:

"The doings of the Convention at New Haven, in the regulation of prices, etc., will likewise come before you, and will demand your very serious consideration. As it is a matter of particular concern to the whole body of the people, will it not be advisable to defer your determination thereon; until it can be referred to, and considered by them in their town meetings? At least, it is not, in my opinion, safe to attempt the regulation of those Articles which are immediately necessary for the support of the Army. We may, it is true, avail ourselves of whatever is at present, on hand. But meantime, if we affix a low price to provisions and articles of importation, we shall find that the Farmer will cease to till the ground for more than is necessary for his own subsistence, and the merchant to risque his fortune on a small and precarious prospect of gain. These things, I trust, will be carefully attended to, and those measures adopted, which best promote the public good."†

The Assembly, however, did not think fit to delay, but at once proceeded to frame an Act putting into the shape of law, all the recommendations as to prices, which were made at New Haven.‡ Notice that the report of the Convention had been "accepted," and that the Act to carry it into effect was in preparation, was by order of the Lower House, advertised in all the newspapers of the State; appearing in the *Connecticut Journal* of New Haven, on March 4th, 1778.

Among other provisions in the nature of penalties for the enforcement of this statute, it prohibited any citizen of the State from suing in its Courts, for any matter, without first

* Hinman's Historical Account, 306.

† State Archives, 10 Rev. War.

‡ Session Laws of 1778, p. 485.

making an affidavit, to be certified on the writ, that he had not directly or indirectly bought, sold, or contracted contrary to the Act.

Six hundred copies of the law were printed separately, for distribution in the several towns, and the sheriff in each county was directed to send them off by special couriers, when he could find no other opportunity.* It was also ordered that copies be transmitted to Congress, and to the six other States represented in the Convention.†

The civil authority and selectmen in each town were to fix proportionate prices, on any articles not specified in the statute, before March 20th, 1778. On March 16th, these prices were thus fixed for New Haven. I quote a few of them, from a manuscript copy in the hands of Charles J. Hoadly, Esq., the State Librarian:

"Cyder in the fall season, 10s. 6d. per bbl.
in the spring, drawn off, 16s.

Dinner, supper, or breakfast, of the best,	2s. per meal.
Toddy,	2s. 4d. per Bole.
Mug flip,	2s. 6d.
Lodging,	6d."

On April 1st, 1778, the civil authority and selectmen of New London, published a new scheme of prices for that town, which shows the rapid fall in the value of the paper currency during the year which had elapsed since their former action, already mentioned. Some of the principal items are as follows:

"Cyder at the Press,	9s.
draw'd off in the Spring,	18s.
By the week: woman for spinning, etc.,	5s. 3d.
Taverners. Dieting, per meal,	2s.
Lodging,	7d.
Oats, per mess,	8d.
West India rum,	1s. per gill.
Geneva,	8d. per gill.
Flip, per mug,	3s.
Toddy, per bowl,	3s.
Cyder, per mug,	8d."‡

* State Archives, 13 Rev. War, 122.

† Ibid., 10 Rev. War, 99.

‡ From a price list in the possession of Charles J. Hoadly, Esq., State Librarian.

This Assembly also audited and paid the bills of the Connecticut commissioners for their time and expenses in attending the convention; and these bills are the only original papers proceeding from that body or its members, which remain in our State archives. I give them in the note below.*

New York, New Jersey, and Pennsylvania promptly adopted similar Acts to that of Connecticut, just mentioned. The other New England States hesitated, and at the May Session of our Assembly in 1778, a committee was appointed to prepare a letter to be addressed to each of them, "touching their non-

* The State of Connecticut,

To Roger Sherman, Dr.

To twenty days' attendance, Convention, at New Haven,	£12	0	0
To horse and expense,	5	18	2
To cash for general expenses of clerkship, wood, etc.,	5	4	9
	£23	2	11
To expense at Mr. Beers',	1	13	0
	£24	15	11

State of Connecticut,

To William Hillhouse, Dr.

To twenty days' attendance on the Convention at New Haven, in behalf of this State,	£12	0	0
To the use of my horse,	1	0	0
To my expenses to and from, on y^e^ road		18	2
	£13	18	2
To expenses at 2s. pr. diem,	4	0	0
	£17	18	2

(State Archives, 10 Rev. War, 120, 127.)

Feb. 1, 1778. Cost of Benjamin Huntington's journey to the Convention at New Haven.

On the road from Norwich to New Haven,	£1	2	2
At Adams' for Lodging,	9	0	0
Paid Capt. Munson for horse and keeping,	2	8	0
Expense on the road home,	1	12	8
	£14	2	5
Twenty days' journey and attendance on the Convention at New Haven,	12	0	0
	£26	2	5

(State Archives, 12 Rev. War, 126.)

compliance with the Report of the Convention of New Haven, respecting the ascertaining the prices of labor, manufactured and internal produce."* A letter to the same effect was sent to Congress, by the Governor, by direction of the Assembly, under date of June 10, 1778.†

A regulating Act was adopted by Massachusetts, in March, 1778, but, it would seem, not in exact accordance with the New Haven plan. Mr. Paine was a member at this time of the General Court of Massachusetts, and exerted all his influence in favor of the recommendations of the Convention.

"The proposal of Congress hath been," he wrote in a letter‡ to Hon. Wm. Baylies, who opposed the measure, "and the object of the regulating Act is, to fix the price of goods at a due proportion with soldiers' wages. And they are continually taught to believe this, as an encouragement for enlisting. While they are fighting in defence of our liberties abroad, they may reasonably expect, that we who remain at home, will exert ourselves in support of a law made to realize their wages. If we can neither obtain or support an army, without giving permanency to our currency, and fixing the price of goods, then every measure to effect this, is essential to the political salvation of America. This is no time to please ourselves with speculations; we must practice."

On Feb. 16th, 1778, the proceedings of the Convention, with the letter of the President, had been read in Congress, and referred to a special committee.§ They reported on April 8th,‖ but, owing to important matters relating to foreign affairs, and, among others, the pending negotiation of a treaty with France, the report was not taken up until May 7th,** and was then laid over for further consideration. But it had now become only too plain that the sinking credit of the Continental currency could not be kept up by a policy of pains and penalties.

What are the reasons, asked Congress in an address to the country, agreed on May 8th, 1778, and which it desired all

* State Archives, 13 Rev. War, 127.
† Ibid., 126.
‡ Sanderson's Biography, ii, 234.
§ Journals of Congress, iv, 99. ‖ Ibid., 201. ** Ibid., 265.

clergymen to read in their churches, what "are the reasons that your money has depreciated? Because no taxes have been imposed to carry on the war. Because your commerce hath been interrupted by your enemy's fleets. Because their armies have ravaged and desolated a part of your country. Because their agents have villainously counterfeited your bills. Because extortioners among you, inflamed with the lust of gain, have added to the price of every article of life. And because weak men have been artfully led to believe that it is of no value."* The remedies for "this dangerous disease" were then declared to be the encouragement of public loans, the retirement of all State bills, refraining from purchasing anything not absolutely necessary, and, above all, recruiting the wasted ranks of the army.

On June 4th, the policy regulating prices was formally abandoned by this resolution:

"Whereas, by a change of circumstances in the commerce of these States, the regulation of prices lately recommended by Congress may be unnecessary; and the measure not being yet adopted by all the States; therefore,

"Resolved, that it be recommended to the Legislatures of the several States that have adopted it, to suspend or repeal their laws made for that purpose."†

On receipt of intelligence of this action on the part of Congress, Connecticut immediately suspended the operation of her Act, till the October Session of the Assembly,‡ when it was repealed.

At the May Session of the Assembly in 1779, an Act aimed at the same results was adopted, prohibiting any one from buying any pork, beef, grain, meal or flour, to sell again, except by special license from the Governor and Council of Safety.§

On August 27th, 1778, a committee of five, headed by Robert Morris, was appointed by Congress, to report on the state of the money and finances of the United States, and also to consider the report from the committee on the New Haven

* Journals of Congress, iv, 271. † Ibid., 328.
‡ State Archives, 13 Rev. War, 126. Session Laws for 1778, p. 499.
§ Session Laws of 1779, p. 527.

Convention.* This resulted in the recommendation of a new financial system, the main features of which were heavy taxes, the retirement of a large part of the Continental bills, and an abandonment of the attempt to make any "limitations of prices of silver and gold."† So far as appears from the Journals of Congress, no further action was taken in that body, respecting the proceedings at New Haven.

An urgent appeal to the people of the United States was sent out by Congress on Sept. 13th, 1779, principally designed to uphold the credit of the currency by representing the wealth, extent, and growing population of the country pledged for its redemption, and declaring that redeemed it certainly would be, in gold and silver, within twenty years after the return of peace. The close of the war, argued the address, would find our ports visited by the commerce of every nation, while yet no amount of imports would drain the United States of its currency, and thus produce a stringency in the money market, since—our currency being our own paper—"it remains with us; it will not forsake us." "On the contrary, should Britain, like Nineveh (and for the same reason), yet find mercy, and escape the storm ready to burst upon her, she will find her national debt in a very different situation. Her territory diminished, her people wasted, her commerce ruined, her monopolies gone, she must provide for the discharge of her immense debt by taxes to be paid in specie, in gold or silver, perhaps now buried in the mines of Mexico or Peru, or still concealed in the brooks and rivulets of Africa or Indostan."‡

This address was published in pamphlet form, and reprinted by T. Green at New London for circulation in Connecticut. A copy of the reprint, which was sent to the clerk of the third society in Colchester (probably to be read at a meeting of the school society), is in the possession of a member of this Society.§

The policy of regulating prices, however, was destined to be revived once more.

Massachusetts, during this year, proposed that another Convention of Commissioners from New England and New York

* Journals of Congress, iv, 501. † Ibid., 585.
‡ Journals of Congress, iv, 341. § Thomas R. Trowbridge, Jr.

should be held at Hartford, on Oct. 20th, 1779, "to consult how to cut up and destroy the practices of those people who, by various acts, enhance prices, and depreciate and injure the currency, and how the further depreciation of the currency may be prevented." The Convention was held (Benjamin Huntington being again one of the Connecticut Commissioners),* and, among other measures, recommended a new attempt to limit prices. This being communicated to Congress, was on Nov. 19th, 1779, endorsed by that body, which resolved that each State ought to pass new laws for this purpose, restricting prices so as not to exceed twenty times the common rates in 1774.†

This was probably not far from the actual rate of depreciation; for in this year, our Assembly increased the amounts of all fines and penalties twenty-fold, and the per diem allowance to the assistants for attending the General Assembly were at the same time raised in the same proportion.‡

An old memorandum book is in my possession in which a young man just out of college, belonging in Fairfield County,§ kept his cash accounts, during the Revolutionary War, and I give a few of the entries for 1779 to show the range of prices at that time.

	Dolls.
1¼ yds. drilling at 24,	42.
Garters,	4.
Tobacco, 2½ lbs.,	8.33
Dressing hat,	7.
Pistol,	115.
Tea, 1⅛ lb.,	35.
Horse shoe,	5.
6 lbs. snuff,	72.
1½ hard dollars, received for rates,	60.
Shoes,	50.
Spirits, 1 qt., ⅛ silver,	9.

High as these prices seem, they are small compared with those of the next year. I give one more extract from his accounts for 1780.

*State Archives, 15 Rev. War.
†Journals of Congress, v, 421.
‡Session Laws for 1779, p. 534.
§David Judson.

"Oct. 10th, 1780. Expenses to New Haven, Hartford, &c.:

At Lewis's, New Stratford,	72 dolls.
New Haven paper,	12 dolls.
Brand. sling, in company,	20 dolls.
Entertainment, Meriden,	10 s. N. E.*
Hartford, Sling and Din^{r},	10 s. N. E.
Sling,	18 dolls.
Cherry,	16 do."

In the face of prices like those of 1779 and 1780, it was evidently vain to persevere longer in the Sisyphus-like task of forcing the almost worthless currency above its natural level, by the mere fiat of law. In July, 1779, Pelatiah Webster published his essay on Free Trade and Finance, dedicating it to Congress. He told plain truths, and the public—even the patriotic public—were, at last, ready to receive them. For a true and sound financial system, the country was not yet prepared; but the general repeal of the "regulating" and "tender" laws, which was achieved by 1780, showed that there was a real progress in the right direction.

* "N. E.," I presume, means the new emission of State bills, authorized in 1780, and which were below par almost from the first, and worth but about fifty *per cent.* at the date of the above entries.

See N. H. Colony Hist. Papers, vol. i, Dr. Bronson's Essay, pp. 126, 137.

THE

BOUNDARY LINE BETWEEN CONNECTICUT AND NEW YORK.

By Professor Simeon E. Baldwin.

[Read February 10th, 1879.]

Five years after Henry Hudson sailed up the great river, to which the English, not the Dutch, have given his name, in the year 1614, there appeared before the Assembly of the States General of the United Netherlands, the deputies of the "United Company of Merchants, who have discovered and found New Netherland, situate in America, between New France and Virginia, the sea-coasts whereof lie in the latitude of 40 to 45 degrees." They came to ask a grant of an exclusive right to settle and trade with these countries, and obtained a monopoly for three years; which was afterwards extended, in favor of the Dutch West India Company, for four years from 1621.

The original patent of New England (granted in 1620) embraced all that part of North America between the 40th and 48th degrees of north latitude, "from sea to sea." A glance at the map will show that these boundaries run as far south as Philadelphia, and north to Quebec. Lord Say and Seal, and his associates, who were about to plant a new colony, in 1631, southwesterly from Massachusetts, obtained their grant under this old "Warwick patent."

The lands they purchased comprehended "all that part of New England in America, which lies and extends itself from a river there, called Narraganset river, the space of 40 leagues, upon a strait line near the sea shore, towards the South West, West, and by South or West, as the coast lieth towards Virginia, ... and all . . . . the lands . . . . being within the lands aforesaid, North and South in latitude . . . . and in . . . . longitude; of and within all the breadth aforesaid, throughout the mainlands there, from the Western ocean to the South Sea, ... and also all the islands lying in America aforesaid, in the said seas, or either of them, on the Western or Eastern coasts or parts of the said tracts of lands."

The first settlers of the Colony of New Haven, derived their title under these grants,* and spread towards the west and south, according as they found openings for trade or plantations, extending their jurisdiction as far south as Delaware bay, by vote of the General Court,† as early as 1641.

Purchases from the Indians were made from time to time in the common interest; the most westerly lands, thus acquired, being within the present bounds of Greenwich.

The Dutch, although claiming title as far east as the Fresh River (now Connecticut river), were not in a condition to oppose any very energetic resistance to the advance of New Haven.

Their first formal protest was received by our General Court in 1646.‡ It was written in Latin—the diplomatic language of the day—and ran in the name of William Kieft, General Director, and the Senate of New Netherland "to Thee, Theophilus Eaton, Governor of the place by us called the Red Hills in New Netherland (but by the English called New Haven)." It is almost to be regretted that the Dutch name, rather than the English, did not finally attach to our city—so graphically does it describe the two rugged sentinels, on either side, which give its character to the New Haven plain.

This document accused New Haven of an insatiable desire of possessing that which it did not own, and of a determination

* 2 New Haven Col. Rec., 517.
† 1 Id., 57. ‡ Ibid., 265.

to fasten its foot near Mauritius River, and there to destroy the trade between the Dutch and the Indians.

A reply, also in Latin, was adopted by the Court, from which I quote a few sentences:

"We do truly profess we know no such River" (as the Mauritius River), "neither can we conceive what River you intend by that name, unless it be that which the English have long and still do call Hudson's River. Nor have we, at any time, formerly or lately, entered upon any place, to which you had or have any known title." For further satisfaction, they were referred to the English government, "being well assured that his Majesty, our Sovereign Lord, Charles, King of Great Britain, and the Parliament of England, now assembled, will maintain their own right and our just liberties, against any who, by unjust encroachment, shall wrong them or theirs."

King Charles and the Parliament, however, were too busy fighting each other, just then, to take much thought about the handful of colonists in the woods of New England. The matter was brought before the Commissioners of the United Colonies, at a meeting held at New Haven, but Governor Kieft scoffed at their authority: "We protest," he writes,* "against all you, Commissioners, met at the Red Mounts, as against breakers of the common league, and also infringers of the special right of the lords of the States, our superiors, in that ye have dared, without express commission, to hold your general meeting within the limits of New Netherland." His successor, under instructions from the Dutch West India Company to fix, if possible, upon some provisional boundary with New Haven; showed a more friendly spirit; and the treaty of Hartford,† in 1650, between the Commissioners of the United Colonies and Governor Stuyvesant, was designed to bring the controversies over jurisdiction to a close. It provided, among other things, that the dividing line between the English and the Dutch "upon the main" should be fixed, to "begin on the West side of Greenwich Bay, being about four Miles from Stamford, and

* 1 Dunlap's Hist. of New York, 92.

† 1 American Historical Magazine, 194, 229.

so to return a Northerly line twenty Miles up into the Country; and after as it shall be agreed by the two Governments of the Dutch and New Haven, provided the said line come not within Ten Miles of Hudson's River; and it is agreed that the Dutch shall not, at any time hereafter, build any House or Habitation within Six Miles of the said Line; the Inhabitants of Greenwich to remain (till further Consideration thereof be had) under the Government of the Dutch." These bounds were to be maintained inviolate, "until a full and final Determination be agreed upon, in Europe, by mutual Consent of the two States of England and Holland."

It is the negotiation of this treaty which is so pleasantly hit off in Knickerbocker's History of New York:—the solemn embassy of two of the most ponderous burghers of New Amsterdam, bearing the very spy-glass with which a Dutch trader had first discovered the mouth of Connecticut River;—the "two, lean Yankee lawyers, litigious-looking varlets," who were deputed to receive them;—the triumphant production of the ancient spy-glass, and the dismay when the other side "produced a Nantucket whaler with a spy-glass twice as long, with which he discovered the whole coast, quite down to the Manhattoes, and so crooked that he had spied with it," not only the mouth, but the whole course of the river from Saybrook to the Massachusetts line.

The border difficulties, however, still continued, and in 1653, New Haven sent one of her citizens to London to ask aid from Cromwell, then Protector. He did not wait to be asked twice; and the next summer saw a British expedition against the Dutch, landing at Boston, to which New Haven joyfully added a little army of 133 men. Peace with Holland however had already been concluded across the ocean, and the news came in time to stop any hostile advance. New Haven now insisted, with threats that force would otherwise be used, that Greenwich must be deemed within her jurisdiction; and the demand was complied with by the complete submission of its inhabitants in 1656, and its peaceful consolidation (for purposes of representation, at least), with Stamford.*

* 2 N. H. Col. Rec., 176, 216, 185.

Had New Haven retained its independence, who shall say how far the skillful state-craft and firm guidance of her Eatons, Newmans, Goodyears and Leetes might have carried her western bounds? But in 1662 came the royal charter of Connecticut, bounding her "East by Narragansett River, commonly called Narragansett Bay, where the said river falleth into the sea; and on the North by the line of the Massachusetts plantation; and on the South by the sea: and in longitude, on the line of the Massachusetts Colony, running from East to West, that is to say, from the said Narragansett Bay on the East, to the South Sea on the West part, with the islands thereunto adjoining."

The English had by this time their settlements across the Byram river, and a letter has been preserved, written by Gov. Stuyvesant in 1663, urging some friendly termination of the differences as to the jurisdiction over "East Dorfe, by the English called West Chester, that the parties may live in peace in the Wilderness, where so many barbarous Indians dwell." But, the next year, came the surrender of New Amsterdam to the Duke of York, whose patent included "all that island or islands commonly called by the general name or names of Meitowax, or Long Island, situate and being towards the west of Cape Cod, and the narrow Highgansetts, abutting upon the main land between the two rivers, there . . . . known by the . . . . names of Connecticut and Hudson's river; and all the land from the west side of Connecticut river to the east side of Delaware Bay."

It is obvious that this grant, under which the Colonies of New York and New Jersey were afterwards constituted, covered much which was also in the Connecticut patents.

In those days, the geography of North America was hardly as well understood at London, as that of Central Africa is now; nor apparently did the Crown officers, in making out a new patent, trouble themselves to inquire as to what had been already granted by former conveyances. Long Island, for instance (not to mention the claim of Connecticut to it), had been long before granted to the Earl of Stirling; and the Duke

of York found it necessary to give him three hundred pounds for a release of his title.

The Dutch were as ignorant as the English of the real extent or bounds of the territory to which each was laying claim. In Van der Donck's Description of New Netherlands (1656), he says:

"Many of our Netherlanders have been far into the country, more than seventy or eighty miles from the river or sea-shore. We also frequently trade with the Indians, who come more than ten and twenty days' journey from the interior, and who have been farther off to catch beavers, and they know of no limits to the country, and when spoken to on the subject they deem such enquiries to be strange and singular. Therefore we may safely say that we know not how deep or how far we extend inland. There are, however, many signs which indicate a great extent of country, such as the land winds, which domineer much, with severe cold, the multitudes of beavers and land animals which are taken, and the great numbers of water fowl which fly to and fro across the country in the Spring and Fall seasons. From these circumstances we judge that the land extends several hundred miles into the interior."

The Eastern boundary of the Connecticut charter would seem to be plain enough, but Rhode Island, which obtained a charter in 1663, bounding her west on the "Pawcatuck River, alias the Narragansett River," immediately called it in question.

In fact, the Pawcatuck falls into the Sound some twenty-five miles west of the Narragansett, and makes no bay; but, owing to an ill-advised concession of the agent of this Colony, the grant was worded as it was, and she finally, in the next century, yielded her original claim.

Rhode Island was unfortunate in the rivers from which her boundaries were derived, on the north as well as on the west. Like Connecticut, she was bounded northerly on the south line of Massachusetts, and this line was, by the Massachusetts charter, to be three miles south of the most southerly part of the Charles River. Massachusetts asserted that the "most southerly part of the Charles River" was the most southerly part of any run of water which was an *affluent* of the Charles River. A brook was found, named Mill brook, which ran into the Charles River from Whiting's pond, lying towards the south; and into the south end of this pond ran a smaller

brook, called Jack's Pasture brook, and the spring head of this, they claimed—and after two hundred years of controversy, the claim was finally allowed—was the most southerly part of Charles River.*

The evacuation of New Amsterdam and the transfer of its claims to the king's brother, brought a speedy determination of the Western boundary of Connecticut. Commissioners were appointed from each Colony in 1664, and soon agreed that the Southern bounds of Connecticut were the sea, and that Long Island belonged to the Duke. The west bounds† were to be "the creeke or ryver called Momoronock, which is reported to be about 12 myles to the east of West Chester, and a lyne drawne from the East point or syde, where the fresh water falls into the salt, at high water mark, N.N.W. to the line of the Massachusetts."

This adjustment of differences, while it ended the pretensions of Connecticut to run to the Pacific Ocean (so far as the southeastern portion of the territory of New York was concerned), and terminated her jurisdiction over Long Island, where Southampton, Easthampton, Setauket, and other towns had long acknowledged her authority, yielded also the claim of New York to extend to the Connecticut river, and thus confirmed to Connecticut the title to five considerable towns along the Sound. Governor Nicolls of New York wrote to the Duke soon afterwards, justifying the decision as required by the priority of the Connecticut patent, and adding "that to the east of New York and Hudson's River, nothing considerable remains to your Royal Highness, except Long Island, and about 20 miles from any part of Hudson's River. I look therefore upon all the rest as empty names, & places, possesst 40 years by former grants, and of no consequence to your Royal Highness, except *all New England* could be brought to submit to your Royal Highness's Patent."

The Commissioners of Connecticut, however, had made a

* Rhode Island *vs.* Massachusetts. 4 Howard's U. S. Supreme Court Rep., 591.

† 1 Boundaries of N. Y., p. 25.

better bargain than the Governor supposed. From Tarrytown to Newburgh, the Hudson takes a course not far from N.N.W. and it would seem that the New York Commissioners—not long from England—thought that the N.N.W. line, laid down in their final agreement, ran parallel to the river, and about twenty miles from it. In fact, however, as it is probable the Connecticut Commissioners, who were old inhabitants, well knew, this N.N.W. line crossed the Hudson near West Point, and, if projected, reached a point not far from where Utica now is. Connecticut pushed her settlements to the edge of this line, claimed jurisdiction over Rye, and complained loudly of grants of territory on the east side of the Hudson, made by the New York government.

In 1683, Andros was succeeded by Governor Dongan, who at once notified Connecticut that he was not satisfied with the old agreement of 1664, and desired a new convention on the subject. She appointed Commissioners to treat with him, and in a fortnight's time, a wholly new boundary was created. This was to

"begin att a certain brook or river called Byram brooke or river, which river is between the towns of Rye & Greenwich ; that is to say, at the mouth of the said brooke, where it falleth into the Sound, at a Point called Lyon's Point, which is the eastward point of Byram river, & from the said point to goe as the said river runeth, to the place where the common road, or wading place over the said river, is ; and from the said road or wading-place to goe N.N.W. into the country soe farr as will be 8 English miles from the aforesaid Lyon's point."

Another eight mile, N.N.W. line was then to be run parallel to the first, beginning twelve miles farther eastward on the Sound, and a line connecting their northern ends was to bound Connecticut, on the side of Westchester. From the eastern end of this North line, another line was to be run, parallel to the Hudson and twenty miles distant from it, until the bounds of Massachusetts were reached. But how could a line well be drawn, at once parallel to the Hudson, and in every place twenty miles distant from it? Obviously its course, following the constant, through slight bends in the river, would be of such an irregular and "zig-zag" character, as to make it quite

unsuited for a permanent boundary between two States. To meet this difficulty, it was agreed to begin by taking two points, one on the Massachusetts line, and the other where Connecticut meets Westchester County, each just twenty miles from the Hudson, and connecting them by a straight line: then the area which was east of this line, and yet within the twenty miles, was to be ascertained; and, finally, a new line drawn, parallel to the first, but so far east of it as to include, within a long and narrow parallelogram, a number of acres precisely equal to that outside of this first line, and, yet, less than twenty miles from the river. The eastern side of this parallelogram, or "equivalent tract," as it was called, was to be the final boundary between the States. Subsequent surveys fixed its area at a little more than 60,000 acres; and in 1684, the southern portion of the boundary, as agreed upon, was marked by what were designed to be permanent monuments.

The Commissioners who conducted these negotiations on the part of Connecticut, had secret instructions to get Governor Dongan "to take up with as little as may be;" and that "as to the rise of our line at Momarronoke, you are to declare there could be no mistake between the Commissioners [in 1664] about that, and therefore endeavor to hold that bound." Justice, however, was plainly on the side of New York, and the concessions made to her on this occasion were practically unavoidable. As the Commissioners wrote to the selectmen of Rye on their return from "Yorke," "we were loath to have parted with you, and would have been glad to have continued you in this government; yet the providence of God hath so disposed that by our agreement with Governor Dongan, we were forced to part with you, & could not help it." They succeeded, however, in making it a part of the settlement that the tax rate of Rye for 1683 and all arrearages of taxes levied by Connecticut for previous years should be paid into her treasury.

It was for years Governor Dongan's hope that the whole of Connecticut might be annexed to his province. In his Report

to the Committee of Trade, on the Province of New York, of Feb. 22d, 1687, he urges this measure as "an absolute necessity," * "Connecticut being so conveniently situate in its adjacing to us, and soe inconvenient for the people of Boston by reason of its being upwards of two hundred miles distance from thence. Besides Connecticut, as it now is, takes away from us almost all the land of value that lies adjoyneing to Hudsons River & the best part of the river itself. Besides, as wee found by experience, if that place bee not annexed to that Government, it will bee impossible to make anything considerable of his Mat^{ys} customs & revenues in Long Island: they carry away, with^{t} entring, all our oyles, which is the greatest part of what wee have to make returns of from this place: And from Albany and that way up the river—our Beaver and Peltry."

"This Government too has an undoubted right to it by charter, which his late Ma^{ty} of Blessed Memory granted to our present King, and indeed if the form of the Government bee altered, these people will rather choose to come under this, than that Governm^{t} of Boston, as y^{r} Lo'^{ps} will p'ceive by their present Gov^{rs} lres directed to me."†

On the other hand, the Long Island towns had not ceased to look towards a possible reunion with Connecticut, and soon after the accession of William and Mary, two years later, we find the people of Easthampton planning "a Petition to their Majesties y^{t} we might be rejoyned wth Connecticut Governm^{t}, as formerly, agreeably to the act of Parliament, y^{t} all places, N.E. being particularly mentioned, shall have the same privileges they enjoyed in y^{e} yeare 1660 restored unto them."‡

Threats on the part of Connecticut to reclaim jurisdiction over Bedford and Rye led New York, at last, to apply to the King in Council for a confirmation of the Dongan boundary agreement of 1683; and the order of confirmation was made in 1700.

A serious dispute sprang up between the two Colonies soon

* 1 Documentary History of New York, 153. † Ibid., 150.
‡ 2 Doc. Hist. of N. Y., 187.

after the survey of 1684, as to the point at which that survey terminated on the east. The surveyors, beginning at the mouth of Byram river, ran a line from "a great stone at the wading place, where the road cuts the said river," N.N.W. six and one-half miles to three white oak trees, which they marked C. R., and found to be seven miles and one hundred and twenty rods from the Hudson. They then continued on from these trees upon a line parallel to the Sound, to a point twenty miles from the Hudson and eight miles N.N.W. from the Sound, and there stopped.

Connecticut always claimed that at this point they marked an oak tree, as a land-mark; and that both this tree, known as the "duke's tree," and the three white oak trees at the other end of the same line, could easily be identified.

New York, on the other hand, after a few years, maintained that these monuments were uncertain, and that a new survey must be had to fix the line. Repeated applications were made by New York to Connecticut to join in such a survey, but for nearly forty years Connecticut refused to join, unless the position of the "duke's tree" were first conceded, and made a starting point. In 1723 we find our legislature resolving that this tree has ever since 1684 "borne the name of the duke's tree, and is famously known by the said name, and is by the said survey considered, stated, and esteemed to be twenty miles from Hudson's River. All which marks and monuments have been, ever since the said survey fixing them, famously known as they are at this day."

The last attempt to agree on a boundary was in 1724, when each Colony appointed Commissioners—those of New York with full powers, but those of Connecticut restricted to the line of the 1684 survey. It came to nothing, and the New York commissioners reported to Governor Burnet that it was "not easy to tell by what Rules the Commissioners of Connecticut acted, they were so contradictory to themselves, and to the Public acts of their own Government. They seemed Steady in Nothing, but in the Ambigious manner of their giving Assent to any of our Proposals, which had taken away all colour of

Reason for Dissenting; or by giving their assent upon conditions Slily insinuated, & entirely foreign to the matter in Question, and highly injurious to this Province."

Worn out by fruitless negotiations, which at length became bitter and personal controversies, New York finally requested the royal sanction to an Act permitting her to run the boundary *ex parte*, unless Connecticut should, within nine months, consent to join in establishing it. The king approved the measure, and Connecticut was obliged to appoint commissioners to fix the line. They met commissioners from New York in 1725, and, in a few weeks, the little parallelogram which ends at Byram river, and is in advance of the general western line of Connecticut, was amicably re-measured and re-marked. The three white oak trees at the first (or N.W.) corner were still standing. Some burned wood was buried near them, and C. R. cut upon a large stone at the same place. The main north and south line, it was agreed, should not, as before, be run straight, but, in order to preserve Ridgefield to Connecticut, should make an angle opposite Peekskill; approaching there a point which would be twenty miles from Courtlandt's (or Verplank's) Point, were it not for the interposition of the "equivalent tract." This was found to require a breadth of a little over one and three fourths miles, throughout its whole extent, and its eastern boundary was definitely surveyed in 1731, by running a straight line from the monument opposite Courtlandt's Point to a monument on the Massachusetts line, of a course "nearly north twelve degrees and thirty minutes east" and "parallel to the Hudson's River," which line was marked by monuments set every other mile; and then by running a parallel line to the eastward, of the breadth necessary to include the equivalent tract, and marking this again by occasional monuments.

This amicable conclusion of a controversy of almost a century's standing was due partly to a spirit of mutual forbearance and partly to the good management of the New York commissioners. These gentlemen seem to have well understood one of the chief engines of diplomacy—the exercise of a generous

hospitality toward those with whom you are to negotiate. By their bill, as rendered to the Governor and Council, we find that they commenced their labors on April 16, 1725, by the purchase, among an abundance of other more substantial articles of provisions, of 16½ gallons of rum, 6 shillings worth of ginger-bread, 6 pounds of chocolate, 13 pounds of loaf sugar, 1 pound of cinnamon, and 1 ounce of nutmegs, 1½ gallons of lime juice, 6½ gallons of brandy, 350 limes, and 8 shillings worth of tobacco and pipes. 2 shillings worth of hooks and lines are also charged; and we may easily picture to ourselves these worthy gentlemen inviting their Connecticut antagonists to join in many a friendly trouting excursion, ending with a picnic dinner in the fields with unlimited punch and pipes. Perhaps a game supper may have closed their labors, for among the last day's charges appear "partridge and other small things, 9s. 6d."

It is much to be regretted that the boundary marks set up by these commissioners were not of a more permanent character. Let me describe one or two of them in the words of their own report.

"We sett up a stake, heaped some stones round it for a monument, being in a swamp, and on the North West side of a brook, which runs into the pond of a saw mill; and marked some trees on each side of said monument, in a North 24 deg. 30 min. West Course. Corrisponding to the sixth mile in the Western line, as aforesd., we sett up a stake in the midle of a bogie meadow."

Marks like these could not be expected to remain in a condition to be easily identified, after a lapse of even ten or twenty years, were it only for the operation of natural causes; but during the century and a half which has passed since their erection, military camps have been established, roads laid out, houses built, and farms cleared, over different parts of the boundary line, in such a manner that what would, in any event, have been difficult, is now probably impossible.

Many also of the natural objects, designated as land-marks in the ancient surveys, are no longer to be found. The "wading-place in Biram river" has been long replaced by

...ankments, and similar transformations

... from this uncertainty as to where Con... New York begins have been considerable. ... have been evaded: the right to vote ...: arrests and the service of legal process ... serious difficulties: and private land ...lation. A favorite manner of conduct... the border has been to connect a build... supposed line, by an underground passage, ... side, in which the liquors were stored, ... in either State, or—as far as legal ... neither: for no magistrate could tell ... State the offence was committed.

... of hundred inhabitants—Hitchcock's ... near the very boundary, between ... Conn., that half its houses are, or ... State, leaving its main street to

... Westchester County, involving the ... executed in a house upon the ... is sixteen feet west of the New ... to the controversy can de... whether it may not, in ... executed in one State, the ... valid.

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... marks led Connecticut ... such as New York might ... by permanent monuments ... Three commissioners were ... with nearly similar powers. ...ments, the commissioners were ... neighborhood traditions, as to the ... now entirely disappeared. ... eight miles from Lyon's Point,

had of course long since perished, but the point which they marked had been preserved in the memory of some of the older inhabitants, and a search resulted in finding there, almost covered with earth, by the roadside, the "great stone" described in the survey of 1725 as marked "C. R." The antique letters were still plainly legible, and on digging around it, the burnt wood was found, three feet off, which was buried at the same time.

The commissioners were able to proceed as far north as Ridgefield Corner, without meeting any very serious difficulty; the ancient monuments being found to correspond nearly with the courses and distances given in the old surveys.

But when they came to re-survey the long north and south line, running up to Massachusetts, it was for the first time discovered that the old surveys of 1731 had been quite inaccurate, and that the dividing line, as run by compass, could not be harmonized with the description of the same line, as fixed by monuments.

Some of these monuments were satisfactorily identified, and it was plain that they varied essentially from a straight line, and varied in favor of New York.

As the New York Commissioners had only been authorized to "ascertain" the boundary, they declined to join in any attempt to rectify the mistakes in the 1731 survey, nor would they agree to recognize the boundary as a straight line, when the boundary *marks* indicated that it was a crooked one.

The Connecticut Commissioners refused to adopt the marks as their guides, and insisted on following the straight line from the Massachusetts boundary to Ridgefield Corner.

New commissioners were appointed by each State, and they also, in 1860, split upon the same rock.

Connecticut, thereupon, offered to submit the controversy to arbitration, but New York declined, and proceeded to erect new and substantial monuments to designate the irregular line, in place of the ancient ones, which had so long assisted to preserve it.

Connecticut has never recognized these boundary marks, and

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Governor of New York, that they "had ever exercised and should and would exercise government there."*

New York, however, has now been for more than a century in peaceful possession, and her Courts have claimed that her jurisdiction extends as far as a straight line drawn from Fisher's Island to Lyon's Point.†

That she owns all the islands specifically named in her boundary statute, Connecticut no longer denies, but she does deny that the general dividing line between the States is farther north than the middle line of the Sound.

In Douglass' Summary of American History (1749) this part of the New York boundary is described as running "round the E. end of Long Island, including Fisher's Island and Gardner's Island, which lie near the entrance of New London Harbor in Thames River of Connecticut Colony; then along the Northern Shore of Long Island Sound to over against the mouth of Byram River."

The Captain's Islands, off Greenwich, are claimed by both States, and were the subject of official correspondence between their Governors in 1765. The United States, before erecting the light house upon them, required deeds of cession from each State.

Goose Island, off Norwalk, was decided by the U. S. Circuit Court for the District of Connecticut, in 1871,‡ to belong to this State, and so not to afford a place for carrying on a fish oil factory, which, by Connecticut laws, was a nuisance to the residents on the shore.

The Thimble Islands, just west of New Haven, once the haunt of the notorious pirate, Captain Kidd, because a sort of No-Man's-Land, are now, I believe, generally conceded to belong to Connecticut, and the same is true of Mystic Island, off Stonington.

These islands, along our shore, have often been found con-

* 1 Trumb., Hist. of Conn., 375.

† Manley vs. People. 3 Seld. Reports, 295. Mahler vs. Transp. Co., 35 N. Y. Reports, 352.

‡ Keyser vs. Coe, 37 Ct. Rep., 610.

venient resorts by persons wishing to engage in illegal trades or practices, since an arrest under authority of either State may be met by a claim of citizenship in the other.

Some of those before me will remember the hasty levy of a company of our militia, a few years ago, to proceed to Charles Island, off Milford, and arrest a couple of prize fighters with their backers, just landed there by a New York excursion boat. The island was surrounded, and the whole party captured and brought over in triumph to the New Haven jail. Their counsel excepted to the jurisdiction of our Courts, on the ground that the acts complained of were committed in New York, and the cases were never brought to trial.

Thefts and assaults, also, are not uncommon on the many steamers and other craft that ply the Sound, near the Connecticut shore. In what jurisdiction are such crimes to be deemed to be committed?

A case of piracy occurred, a few years since, on a schooner lying about five miles eastward of Lyon's Point, and a mile and a half off the Connecticut shore. The offender was seized, tried, and convicted, but the Supreme Court of the United States arrested the sentence of death, because it was doubtful whether this spot was or was not within the jurisdiction of New York.*

A second trial resulted in the pirate's discharge, because the jury were of opinion that the act *was* done within the limits of New York, and so outside of the jurisdiction of the Court which tried him.

The verdict of a jury, however, in such a case, or in any case, has no effect in settling the rights of the States concerned, or even in settling the title as respects any private rights of those not parties to the cause.

I have not adverted to the now almost forgotten controversy between New York and Connecticut, as to the "Connecticut Gore," a tract of land in central New York, which Connecticut claimed, in connection with her settlements at Wyoming, as part of her great western domain, stretching toward the "South Sea."

* U. S. vs. Jackalow, 1 Black's Reports, 484.

The bloodshed which stains the history of the Wyoming or Westmoreland colony, was not repeated on the other side of the Pennsylvania line. There the border feud took the peaceable form of land-title litigation. The holders of the Connecticut grants sued those in possession under the authority of New York, in numerous actions of ejectment, brought in the U. S. Circuit Court for the District of Connecticut. The defendants pleaded that the lands in question were not in Connecticut, but in Steuben County, New York, and therefore not within the jurisdiction of the Court. On this, issue was joined, when the State of New York intervened, and sought to remove the suits into the Supreme Court of the United States, on the ground that the controversy involved the rights of States.

Connecticut resisted, and finally defeated, the removal; but not without a decided expression of regret from the bench, that the law obliged them to decline jurisdiction.

"Where," said Judge Patterson,* "will this feud and litigation end? It is difficult and painful to conjecture, unless this court can, under the Constitution, lay hold of the case to decide the question of boundary; which will be a decision of all the appendages and consequences."

It was in the last year of the last century that this suggestion fell from the Supreme Court; and, at last, after resorts to every other expedient, in vain, that court has, this winter, been called upon to determine, in an original suit, all questions of boundary now existing between these States.

It is a majestic feature of our system of government, that a controversy between States, like a controversy between individuals, can be, and at the call of either, must be peacefully adjusted, before a tribunal so constituted as to repel any presumption of partiality, and to command respect by its wisdom as well as by its authority.

For many purposes—for most purposes might we not say—the States of the American Union are sovereign still. Within their spheres of action, which embrace by far the greater part of those affairs, as to which government comes into contact

* New York *vs.* Connecticut, 4 Dallas' Reports, 4, n.

with the governed, the authority of the State is supreme and exclusive. Power over private property, power over personal liberty and security—the right of life and death without appeal —these are the high, the almost unlimited functions of an American State.

And yet these great political communities, independent of each other, and, many of them, with a history dating back more than a century before the United States had a being, must, when their interests come in conflict, instead of resorting to the arts of diplomacy or war, bow to the decision of a civil court, belonging to another government, and which will hear their grievances precisely as it hears those of the humblest citizen.

In the Act passed last year by our General Assembly, inviting New York to appoint commissioners to fix the boundary, provision was made for an appeal to the law, should this overture be declined. This appeal has been taken, and it is more than a coincidence that the suit, just instituted by Connecticut against New York, is in the hands of one of our own townsmen, a distinguished member of the bar of Connecticut, of the same historic family, which, more than any other, has given to that bar its leaders, for many generations, and to which belonged the counsel of the same name, who defended the rights of the State in the early suit, to which I have just alluded, in the last century.

The judgment thus demanded from the Supreme Court cannot fail to settle finally and forever, the dividing lines between these States, by land and sea; and blessed be this peaceful remedy, given by the wise foresight of our fathers—a remedy by which this controversy of two centuries may be ended in a day, not by a compromise,* which (as Irving says of the New Netherlands compact of 1650) is where "one party cedes half of its claims, and the other party half of its rights;" but by the

* The boundary between the States was subsequently settled by an agreement between Commissioners appointed by each, which was duly ratified in 1880–1881 by the two States, with the consent of Congress (21 U. S. Stat. at large, 351); and thereupon the suit in the U. S. Supreme Court was withdrawn.

rules of justice, and the weight of evidence, as they appear to a disinterested arbiter.

America is the only country in which such a court exists—a court for commonwealths. Neither State need fear to submit its cause to a tribunal, the most august in Christendom. Neither loses in dignity when it bows before the great powers which its own consent originally called into being.

Liberty, said Webster, is the creature of law; and it was for this true liberty—a liberty regulated by laws and courts, so that they be American, that our fathers, a hundred years ago, were fighting themselves free from British rule. And wise were the counsels, which after independence was achieved, gave to America a government not only for the people, but for the States;—a government national only where necessary; but where necessary, supreme.

THE ECCLESIASTICAL CONSTITUTION OF YALE COLLEGE.

By Professor Simeon E. Baldwin.

[Read, April 25th, 1881.]

We have in this country a few institutions, old enough to have something of a prehistoric and mythical character, attaching to the story of their origin.

Yale College is one of these, with its legend of the ten ministers, meeting at Branford in the first year of the last century, each bringing with him a few volumes from his scanty library, and declaring, as he laid them down in the presence of the rest, "I give these books for the founding a College in this Colony;" and with its still more shadowy traditions, that the first impulse to this renewal of a long abandoned hope was derived from Massachusetts, and due to the dissatisfaction of the stricter Calvinists in that Colony with the theological views prevailing at Harvard.

One of the leading historical figures of early New England was Samuel Sewall, whose gossiping diary has recently been printed by the Massachusetts Historical Society. Originally educated for the ministry, he soon turned his attention to politics and government, and at the close of the seventeenth century was one of the foremost men in the Colony of Massa-

chusetts Bay; high in office, hospitable, generous, philanthropic, and public-spirited. In 1699, he was chosen one of the Commissioners of the Society for Propagating the Gospel in Foreign Parts for New England, and soon became one of its main pillars.

At this time, it would seem that there was less strictness in the mode of teaching divinity at Cambridge than in the preceding generation, when Sewall was a student there, under President Chauncy. There was nothing in its charter to secure the control of the College in the hands of any religious denomination, and a new charter, providing that no one should be President or Fellow, unless he was and "continued to be" a Congregationalist or Presbyterian, had just been defeated (1699) by the veto of Governor Bellomont,* on account of this particular provision, "made," as Cotton Mather sorrowfully writes, that day, in his diary, "for the religion of the country."†

A letter written to Judge Sewall in 1723 (soon after Rector Cutler had gone over to the Church of England), by Rev. Moses Noyes of Lyme, who had then been a Trustee of Yale College for twenty years, deploring a tendency among the students here towards "Arminian and Prelatical notions," refers thus to the original motives of its foundation:

"The first movers for a College in Connecticut alledged this as a reason, because the College at Cambridge was under the Tutorage of Latitudinarians; but how well they have mended, the event sadly manifests."‡

With these first movers, though Mr. Noyes does not seem to know it, Judge Sewall had been in confidential and friendly communication at the very outset. It was to him that they applied, at least as early as August, 1701, for advice in regard to the general scheme for the new institution, and for the proper form of an Act, to submit to the Colonial legislature, in the nature of a College charter.

In the first letter which has been preserved, from Judge Sewall on this subject, addressed to Mr. Pierpont of New

* Quincy's History of Harvard University, vol. i, pp. 100, 197.

† Id., p. 483.

‡ Woolsey's Historical Discourse, p. 99.

Haven, it is worthy of remark that he recommends that this Act should

"oblige the President to pray and expound the Scriptures, in the Hall, morning and evening, *de die in diem*, and ground the students in the principles of religion, by reading to them or making them recite the Assembly's Confession of Faith, which is turned into good Latin, as also the Catechises, and Dr. Ames' Medulla."

"I mention," he adds, "the Confession of the Assembly of Divines, because Arminianism is crept even into the Dissenters' annotations, as may be seen upon Heb. ii. 9, said to be done by Mr. Obadiah Hughes."*

In the formal draft of the proposed Act which Mr. Addington, the Secretary of Massachusetts Bay, and he soon afterwards forwarded to Connecticut, these recommendations are thus incorporated:

"And whereas the principles of the Christian Protestant religion are excellently comprised in the Confession of Faith, composed by the reverend assembly of divines sitting at Westminster, and by the learned and judicious Dr. Ames in his Medulla Theologiæ; the Rector of the same school is to give in charge, and take special care, that the said Book be diligently read in the Latin tongue, and well studied by all scholars educated in the said school."

In the letter from Judge Sewall and Mr. Addington, in which this draft of a charter was transmitted, they say:

"We should be very glad to hear of flourishing schools and a College at Connecticut, and it would be some relief to us against the sorrow we have conceived for the decay of them in this province. And as the end of all learning is to fit men to search the Scriptures, that thereby they may come to the saving knowledge of God in Christ; we make no doubt but you will oblige the Rector to expound the Scriptures diligently, morning and evening."

At this time and for many years later, the same standards of theology and methods of teaching them existed at Harvard, which were urged by Judge Sewall, in reference to the new College,† but tutor Flynt, upon whom probably the work of instruction mainly fell, and who held office from 1699 for fifty-five years, was thought not orthodox, by some of the controver-

* Woolsey's Hist. Disc., p. 88.

† Kingsley's Review of *Quincy's* History; Biblical Repository, vol. xviii, pp. 189–191.

sialists of the day, though the Trustees of Yale were well enough satisfied with his beliefs to wish to bring him here, as Rector, in 1718.*

The Connecticut clergy who were in correspondence with Sewall and Addington in 1701, and with the Mathers at an earlier period, seem to have had a clearer foresight of what might be the outcome of their enterprise, than their Massachusetts advisers. They struck out of the proposed Act all reference to religion, except such as is contained in the Preamble, and this they altered, so far as to recognize the Collegiate School as already founded, rather than to be founded. As adopted by our General Court, October 9th, 1701, the Preamble reads thus:

"Whereas several well disposed and Publick spirited Persons, of their sincere Regard to & zeal for Upholding & Propagating of the Christian Protestant Religion by a succession of Learned & Orthodox men, have expressed by Petition their earnest desires that full Liberty and Priviledge be granted unto certain Undertakers for the founding, suitably endowing & ordering a Collegiate School within his Maj^ties Colony of Connecticut wherin Youth may be instructed in the Arts & Sciences, who thorough the blessing of Almighty God may be fitted for Publick employment both in Church & Civil State. To the intent therefore that all due incouragement be Given to such Pious Resolutions and that so necessary & Religious an undertaking may be sent forward, supported and well-managed:—Be it enacted," etc.

Liberty is then granted to the ten original contributors and their successors to erect and order the said school, as to them shall seem meet and most conducive to the aforesaid end thereof, "so as such Rules or Orders be not Repugnant to the Laws of the Civil Governm^t."

It was provided that the number of Trustees should not exceed eleven or fall below seven, and that all new Trustees "nominated or associated from time to time, to fill up s^d number, be ministers of the Gospel, inhabiting within this Colony."

No one can compare this Act with the original Boston draft, without perceiving that the Connecticut Trustees deliberately preferred not to make it a part of the organic law of the new

* Woolsey's Hist. Disc., p. 25, note.

institution that any particular kind of theological doctrine should forever be taught in it.

Doubtless they thought that, as they were to be the directors of the scheme of studies, and were to name their own successors, it was quite safe to leave these matters to be regulated at their leisure, and open to change, from time to time, as new books or new views of truth might come to the front. And it is not improbable that some of them may have looked forward to the time when this new seat of learning might spread out into a university, where theology would be taught by a special faculty, and not pursued by the whole body of students, as an indispensable part of a liberal education.

A few weeks after the passage of this Act, the "Collegiate Undertakers" held their first meeting, Nov. 11th, 1701, when the records of Yale College begin.

Their first action is prefaced by a recital that it was

"the glorious, public design of our now blessed fathers, in their removal from Europe into these parts of America, both to plant, and (under the Divine blessing) to propagate in this wilderness, the blessed reformed protestant religion, in the purity of its order and worship; not only to their posterity, but also to the barbarous natives; in which great enterprise they wanted not the royal commands of his Majesty, King Charles the Second, to authorize and invigorate them;"

and that, to attain this end,

"the religious and liberal education of suitable youth is, under the blessing of God, a chief and most probable expedient. . . . . Therefore, that we might not be wanting in cherishing the present observable and pious disposition of many well minded people, to dedicate their children and substance unto God, in such a good service, ... we do order and appoint that there shall be and hereby is erected and formed a Collegiate School, wherein shall be taught the liberal Arts and Languages."

They then made several regulations of detail, for the management of the School, among which were that the Rector should ground the students well in theoretical divinity, and make them recite, every week, *memoriter*, the Assembly's Catechism in Latin, and Ames' Theological Theses,

"of which, as also Ames' Cases of Conscience, he shall make or cause to be made, from time to time, such explanations, as may, (through the

blessing of God,) be most conducive to their establishment in the principles of the Christian Protestant religion."*

He was also to cause the Scriptures to be read by the students at morning and evening prayers, daily, except Sundays, when he was to expound practical theology, or cause the non-graduated students to repeat sermons.

President Quincy, in his History of Harvard University,† erroneously states that these provisions for making the Assembly's Catechism, and Ames' Medulla and Cases of Conscience the standards of religious doctrine, were re-affirmed by the corporation in 1753. They were simply mentioned in the preamble to certain votes then adopted, as having been originally approved by the former Trustees in 1701.‡

By the Act of 1701, the Trustees were empowered to direct and order the school

"in such ways, orders, and manner, and by such Persons, Rector, or Master, and officers appointed by them, as shall according to their best discretion be most conducible to attaine the afores[d] mentioned end thereof."

In 1723, by a supplementary Act, it was provided that

"whosoever shall be chosen and made a Rector of the said Colledge shall, by Vertue thereof, become a Trustee of the same, and be so Esteemed and Taken during his Continuance in the said Rectorship."

Neither of these Acts was in the ordinary form of a charter of incorporation. They rather defined the duties and powers of certain existing trustees, more as a Court of Chancery might have done; and indeed the General Court at this time and for long afterwards was the only Court of Chancery in the jurisdiction.

No corporate name is specified. The power to have, use, and alter a common seal was first given in 1722, by a special resolution of the Assembly,§ but conveyances of College lands continued to be executed by the Trustees, or a majority of them, as a board, not as agents of a corporation. Their power

* Baldwin's Annals of Yale College, p. 21. † Vol. i, p. 70.
‡ Clap's History of Yale College, p. 62.
§ Col. Rec. 1717-1725, p. 340.

to act by a majority vote in all matters was first expressly given in 1723, and had been, in previous years, the subject of protracted discussions in the General Court.

At the October session in 1717, two of the Trustees of the Collegiate School, Mr. Woodbridge and Mr. Buckingham, presented a memorial to the Board of Assistants, taking exception*

"to Severall Votes, passed by the said Trustees, by which they have fixed the s^{d} School at New Haven, as not being passed by the majority of the said Trustees, and so not according to the power by Charter Lodged in the s^{d} Trustees,"

and submitting to the Board certain controverted questions for their determination. One of these was,

"Whether the Trustees of the s^{d} School or the major part of them are, in Order to their passing an Act in form according to Charter, obliged to Convene. Grounded upon the remark that the Revernd M^{r}. James Noyes who Concurr^{d} to an Act passed by Severall of the Trustees tho: he was not present with them, by which that act had the Concurrence of the Majority, and So is Supposed not to Act regularly, or according to the Charter, granted to the s^{d} Trustees."

This was resolved in the negative by the board, and their action was sent down to the lower house; but that body, after hearing "pleadings and arguments upon the Subject of the Memoriall,"† declined to concur in this conclusion as to the proceedings of the Trustees:

"1. Because Their Charter makes them partners not and [Qu., *not a ?*] body politick. 2. The power of a maj^{r} part given in the charter is expressly to furnish direct manage order improve and incourage the s^{d} Collegiate School so erected and formed as is before ordered, and not to form direct and fix the place;

and supposing the Trustees were incorporated, then The Reasons of the dissent from the Lower house are. . . . . 3. The Act of Mr. Noyes after the meeting of the partners or Association was over, was a Consent without conference counsel without consultation and a resolve of the highest importance without debate which is thought to be irregular and dangerous and tends to promote faction and dissension among the partners or in y^{e} association and besides it supposes that there may be a lawful act of an association without associating or an act of an assembly by subscription without assembling."‡

* MSS. Records in State Library; vol. i, of Colleges and Schools, p. 190.
† Id., p. 193. ‡ Id., pp. 191, 196.

These reasons were prepared with evident haste by a committee, and show on their face that they were the work of two hands. The argument based on the hypothesis that the Trustees might be incorporated as an "association" was added by an interlineation, after the first draft.

Another vote was also passed and communicated to the other House, declaring "that by the Charter given to the Trustees of the Collegiate Schoole There must be a Universall agreement of the Trustees to Form and Determine the Place for y^e^ erecting of the Collegiate Schoole."*

The upper house adhered to their original opinion, returning, among their reasons, that

"Allowing y^e^ trustees to be considered as Partners, we see clearly that our own laws have provided that they shall govern by y^e^ majorities as Towns, Proprietors, Owners of Shipps now these are not bodies corporate yet as y^e^ Common law allows are as it were incorporate to do some things w^th^out which they could not well manage. . . . . Many have given Consent w^th^out vocal Conference Counsel without vocal Consultation. A little variation in Situation is not of y^e^ Highest Importance. Many Debates are managed by writing. Its necessary in every Constitution w^n^ y^e^ Circumstances are such as that y^e^ Inconveniences which may happen for want of a Convention are greater y^n^ may happen by y^e^ acting without Convention that their Constitution should be such as to allow of y^e^ acting without a Convention of y^e^ bodies so that y^e^ minds are present and agreeing. For w^ch^ Reason doubtless those Gentlemen are not by y^e^ Patent obliged to a convention."†

These papers show that the House of Representatives maintained that the Trustees were trustees only, and, like all private trustees, could (except so far as expressly authorized by the Act of 1701) act only by a unanimous vote; and that the assistants did not claim that the charter necessarily created a corporation.

It is, indeed, probably true that the Colony, in strict law, had no power to create a corporation. If it had, the right must be derived from the general authority given in the charter to the Governor and Company to

* i, Colleges and Schools, p. 194. † i, Colleges and Schools, p. 192.

"Make, Ordain, and Establish all Manner of Wholesome and Reasonable Laws, Statutes, Ordinances, Directions, and Instructions, not Contrary to the Laws of this Realm of England . . . . as by the said General Assembly, or the major part of them, shall be thought Fit, and for the Directing, Ruling, and Disposing of all other Matters and Things, whereby our said People, Inhabitants there, may be so Religiously, Peaceably, and Civilly Governed, as their Good Life and Orderly Conversation may Win and Invite the Natives of the Country to the Knowledge and Obedience of the Only True God and Savior of Mankind, and the Christian Faith, which in our Royal Intentions and the Adventurers' Free Profession is the only and Principal End of this Plantation."

But this language is taken, word for word, from the earlier Charter of the Colony of Massachusetts Bay, granted in 1629, and which had been cancelled in 1684, by a decree of the high Court of Chancery in England, on the complaint of the Crown that the Colonial Legislature had forfeited it by assuming powers of government, which it was never intended they should possess. One of these acts of legislation, to which the Crown officers took exception, was the charter granted in 1650 to Harvard College; and when William and Mary College was established in 1693, they went to England for a grant of corporate powers. All this was fresh in the minds of Judge Sewall and Mr. Addington, when they drew the Connecticut Act for a "Collegiate School," and in their letter of Oct. 6th, 1701, they say:

"We, on purpose, gave your academy as low a name as we could, that it might the better stand in wind and weather; not daring to incorporate it, lest it should be liable to be served with a writ of *quo warranto*."

The alterations, subsequently made in New Haven, were conceived in the same spirit. The Boston draft empowered the Trustees "to confer degrees upon such scholars educated there, who by their good manners and proficiency in learning shall be judged worthy of the same, as is usual and accustomed at Harvard College in Cambridge within the province of the Massachusetts Bay in New England." This was struck out of the body of the Act, and only these few lines substituted, at the very end, as if added on second thoughts, as a thing which perhaps might be ventured, after all:

"As also, for the encouragement of the Students, to grant degrees or Licences, as they, or those deputed by them, shall see cause to order and appoint."

But by the middle of the last century, the English Colonies had come to feel more like independent governments, and to have less apprehension of interference with their doings on the part of the Crown. A distinct charter of incorporation for a trading society had been granted in 1732, and though soon repealed,* it was repealed by the Colony of its own free will. The next year, indeed, when a revival of this Act was applied for, the Assembly resolved "that altho' a *Corporation*" (referring to the Colony) "may make a *Fraternity* for the management of *Trades*, *Arts*, *Mysteries*, endowed with Authority to regulate themselves in the management thereof;" yet it was "at least very doubtful" whether it had authority to incorporate a company of merchants, "and *hazardous* therefore for this Government to presume upon it."

In 1745, the Trustees of Yale College presented to the General Assembly a petition for the confirmation of the Collegiate School at New Haven, known by the name of Yale College, and for a grant of additional powers and privileges, for "Ordering and Managing the said School in the most advantageous and beneficial Manner for the promoting all good Literature in the present and succeeding Generations." This petition might have been satisfied by the erection of such a "fraternity" as is indicated in the resolution just quoted of 1733, but the bill presented went farther. As drawn and passed, it was a definite charter of incorporation, and Yale College has existed under it ever since.

It is a carefully digested and well considered instrument, perfected apparently as early as the Commencement of the preceding year, for at a meeting of the Trustees, held September 12th, 1744, their records show that

* Acts and Laws at the Special Session in February, 173⅗, chapter ci, p. 403.

"A draught of a new charter* for this College being read and approved by this board.

Voted, that the Rector, with any two or three of the Trustees, do present the same to the General Assembly, desiring that they would be pleased to pass it into an Act."

It was drawn up by President Clap with the valuable aid of Gov. Fitch, a skilled lawyer, and declares in proper form that Thomas Clap (who was then the Rector), and the ten persons then the Trustees, "shall be an Incorporate Society or Body Corporate and Politic, and shall hereafter be called and known by the name of the President and Fellows of Yale College in New Haven;" and "that the said Thomas Clap shall be, and he is hereby established the present President, and the said Samuel Whitman, Jared Eliot, Ebenezer Williams, Jonathan Marsh, Samuel Cooke, Samuel Whittelsey, Joseph Noyes, Anthony Stoddard, Benjamin Lord, and Daniel Wadsworth, shall be, and they are hereby established the present Fellows of the said College."

This charter, which was specially ratified and confirmed in our State Constitution of 1818, was really a reconstitution of the whole edifice.†

The former Rector had been called by that name, it is probable, both because he was to be little more than a school-master, and in imitation of the course of Harvard College, when Dr. Mather dropped the title of President and took that of Rector, at the time that Gov. Dudley, in 1685, received from James II his commission as President of New England. The Rector, also, had at first been merely in the employ of the Trustees, and not one of them; and when in 1723 he was put upon the Board, it was only for such time as they might be pleased to continue him in office. But by the new charter, the President became the chief power in the government, and held his seat by the same tenure as the rest. In President

* It is also described as a "new Charter," in contra-distinction from "the former Acts or Charters," in President Clap's History of Yale College, page 44.

† See *Trustees of Dartmouth College* vs. *Woodward*, 4 Wheaton's Reports, 518.

Stiles' MS. diary,* in giving a statement of the fifteen leading events in the life of President Clap, as set down by the latter, he gives as one: "May, 1745. Became President in the new Charter of College."

So in regard to the Trustees: their number might be as small as seven, or as many as eleven; that of the Fellows was fixed at ten. The Trustees had plenary power to make rules for the government of the school; the rules of the Fellows were to be reported to the General Assembly, when required, for approval or rejection. It was doubtful if the original Trustees could displace any of their number. The new charter gave the President and Fellows such a power, for any default or incapacity.

The qualifications of the successors of the original Trustees had been expressly laid down: they must be "ministers of the gospel, inhabiting within this Colony," and thirty years of age. The new charter does not specify any limitations upon the power of appointment.

There are but two references to matters of religion or ecclesiastical establishment, in the whole charter. One is in the preamble, in which it is stated that the College

"has received the favorable Benefactions of many liberal and piously disposed Persons, and under the Blessing of Almighty God has trained up many worthy Persons for the Service of God in the State as well as in the Church."

The other is in the seventh section:

"That the present President and Fellows of said College and their Successors, and all such Tutors, Professors, and other Officers, as shall be appointed for the public Instruction and Government of said College, before they undertake the Execution of their respective Offices and Trusts, or within three Months after, shall publicly in the College-Hall take the Oaths and Subscribe the Declaration appointed by an Act of Parliament, made in the first year of King George 1st, Entitled an Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the Pretended Prince of Wales, and his open and secret Abettors; that is to say, the President before the Governor, Deputy-Governor, or any two Assistants of this Colony, for the Time being; and the Fellows, Tutors, and other

* Vol. xiv, p. 117.

Officers before the President for the Time being, who is hereby impowered to administer the same: an entry of all which shall be made in the Records of said College."

The oaths prescribed by this Act are two: the ordinary oath of allegiance to the King, and this:

"I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murthered by their subjects, or any other whatsoever. And I do declare that no sovereign, prince, person, prelate, State, or potentate, hath or ought to have any jurisdiction, power, superiority, preëminence, or authority, ecclesiastical or spiritual, within this realm."*

The declaration was a profession of loyalty to King George, and the Hanover succession.

It will be seen, therefore, that these oaths, and this declaration, which all English office-holders, and persons giving public instruction in England, were bound by law to take, had no respect to any religious tenets, except so far as they might involve or justify disloyalty to the Crown.

At the May session of our General Assembly in 1777, the first statute passed, after reciting that "this State and the rest of the United States in America are become Free and Independent States, and have by the unanimous Declaration of their Delegates, in the Continental Congress assembled, published to all the World such their Freedom and Independence," required all civil officers and freemen of the State to take an oath of fidelity to "the State of Connecticut as a free and independent State."

Dr. Stiles, who soon afterwards became President of the College, took this oath in lieu of that prescribed in the charter, and has copied it out, at length, in his diary; but since the present century came in, no College officer has, as such, taken any oath whatever.

That those who drew the charter of 1745 were well aware that they were not imposing upon the Fellows the same tests of qualification, to which the Trustees had been subject, is

* Statutes at large, vol. xiii, p. 189 (Pickering's ed.).

indicated by an inspection of the original draft, which is still preserved in the archives of the State. In this, the sixth section was first written as follows:

"6 That y^e President & Fellows of y^e s^d College and their Successors in any of their Meetings, assembled as afores^d shall and may from time to time as occasion shall require Elect and appoint a President or Fellow in y^e Room and Place *of him or them y^t shall remove out of this Colony.*"*

It is evident that the writer had in his mind, at this moment, one of the qualifications necessary for Trustees, i. e. that they must be "inhabiting within this Colony," but as soon as he had put down the words which are printed in italics, it seems to have struck him that this qualification was not meant to descend to the Fellows, for he immediately drew his pen through them, and proceeded on (without any interlineation), with the language found in the charter as granted, i. e.

"of any President or Fellow who Shall Die, Resign, or be remov^d from his Office, Place or Trust," etc.

The handwriting appears to be that of Governor Fitch, and it is very probable that he was copying, so far as he approved it, the draft made by Rector Clap, and at this point saw that the latter had made a mistake, and at once corrected it. However this may be, Rector Clap tells us in his history of the College that his draft was revised by Governor Fitch, before it was approved by the Trustees, or presented to the legislature.

The absence of any provisions for ecclesiastical government or instruction in the charter of 1745, may be attributed to more than one cause.

The College would naturally desire to present such a charter as the General Assembly would be likely to approve. Theological controversies had of late years sprung up in the Colony, not without considerable bitterness. Good men were often more busy in contending with each other about trifling points of ecclesiastical dogma or administration, than in fighting the common enemy. The students took their part in these polemics. A statute of the College was passed in 1741 to

* MSS. State Archives: i, Colleges and Schools, 278.

punish students who should say of any of the College authorities that they were "hypocrites, carnal or unconverted men."* In February, 1745, a heated attack upon Whitefield had been published over the signatures of the Rector and all the tutors, and it was known that "political new-lights" as well as "political old-lights" were to be found in the General Assembly.

Toleration had begun to take a place on the statute-book, in favor of the Church of England, and certain other denominations, and the public men of the day were far from being all members of either wing of the established church.

President Clap, also, was less inclined to studies of a direct bearing upon a course in divinity, than to those of a more general character, such as mathematics, astronomy, history, and politics.

In 1701, again, learning in Connecticut was almost confined to the Congregational clergy. They were not only the clergymen, but the lawyers, the physicians, and the teachers as well. But by 1745, all the learned professions were respectably represented in the Colony, and it had ceased to be true that a majority of the graduates of Yale entered the ministry. And then, more than all, the College with its governing body of eleven ministers, who were self-perpetuating, might well feel that it could afford to leave to its own administration, all questions of succession, as well as of particular modes of religious education.

It is very probable that to the College authorities and those who felt with them, a good deal was to be read between the lines of the new charter. It provides, for instance, that the corporation

"shall have power to appoint a Scribe or Register, a Treasurer, Tutors, Professors, Steward, and all such other Officers and Servants, usually appointed in Colleges or Universities, as they shall find necessary, and think fit to appoint for the promoting good Literature, and the well ordering and managing the affairs of said College."

When the aid of the State was sought in 1766, for the support of a Professor of Divinity, a tract published in New

* Woolsey's Hist. Disc., p. 105.

A.D. 1701, by ten Principal Ministers in the [illegible] [illegible] the Desire of many other Ministers and People in it, [illegible] and Approbation of the General Assembly."*

He then quotes the several Acts of the Assembly, [illegible] that of 1753, and adds:

"The Founders, at their first meeting in 170[illegible], made a formal foundation of the College, by an Express [illegible] a Number of Books for a Library; and [illegible] to propagate the blessed [illegible] of its order and Worship."†

Here he clearly refers [illegible] meeting of the Trustees [illegible] character of its foundation [illegible] legislature.

But in his argument before [illegible] to the memorial asking the [illegible] better management of the [illegible]

"that the first trustees, undertakers, [illegible] nated by the ministers with the general [illegible] compact, became a society or *quasi*-[illegible] it), nearly two years before they had a [illegible] College; and that they formed it by [illegible] of books, above a year before they had a [illegible]"

Thus in 1763 he throws back the first giving of books for the College Library to a period one or two years before the first action of the General Assembly, in seeking to prove that those who gave them, and not the State, founded the College, and so had the sole right of visitation; while ten years before, when seeking to show the religious constitution of the College, he placed its foundation after or upon the charter, and argued as to its character from the language of the legislature, and the votes of the Trustees acting under its authority.

This discrepancy, however, may not improbably be due to President Clap's having acquired, in his later years, more accurate information as to the date of the first beginnings of the College.

* p. 7. † p. 9.

A movement in favor of compelling the introduction of laymen into the corporation began a few years after the grant of the charter, and continued with increasing force until in 1792, when by a judicious compromise, made with the consent of the College, in consideration of a grant for a new building, and to support "Professors in the various arts and sciences," the Governor, Lieutenant-Governor, and six of the Assistants were made Fellows, *ex officio*, but without a voice in the election of successors to the existing Fellows. In President Stiles' MS. literary diary for 1792, we find a full explanation of the inside history of the arrangement thus effected.*

Something of this kind had been impending during the whole of his administration. His election to the presidency, indeed, had been secured, in no small part, by the urgency of prominent members of the State government, who believed that under his auspices a reconciliation between the State and the College would probably be effected, and that supply of its needs from the public treasury resumed, which had been suspended for many years on account of a jealousy of its clerical management. A committee of the General Assembly met the corporation in July, 1777, and again in January, 1778, to endeavor to arrange a compromise by which a grant for new professorships, books and apparatus might be made, on condition that some laymen, elected by the State, should be added to the existing Fellows, but no agreement was reached.†

Dr. Stiles, before accepting the presidency, drew a plan for the extension of the College into a University, by the aid of public grants, and the creation of chairs of Law, Oratory, etc., which was laid before the committee of the Assembly by the corporation. He also took pains to call on Gov. Trumbull at his home in Lebanon (Nov. 17, 1777), to learn his views of the situation, and found that

"His Idea is that to engage the Assembly, not the Charter to be changed, but four Civilians to be chosen into the next vacancies in the Corporation of Yal. Coll. Nothing short will give radical Healing and Satisfaction."‡

* Vol. xiv, pp. 268–275, 279–281, 287–296.

† Id., vol. viii, pp. 60, 234.

‡ Ibid., p. 109.

The agitation of this subject had, indeed, been almost continuous for forty years before the Act of 1792. A few days before its passage the corporation had had another fruitless conference with a committee of the Assembly, and President Stiles had returned from Hartford discouraged at the prospect. His conversations with leading members of both Houses had satisfied him that they would be content with nothing less than introducing a majority, or at least an equal number of laymen into the government of the College. The Act as passed, therefore, at once commanded his approval. It was, he says,

"A noble Condescension, beyond all Expectation! Especially that the Civilians acquiesce in being a Minority in the Corporation."*

The corporation accepted it unanimously, after a two days' discussion, and upon consultation with many of the principal friends of the College, both lay and clerical.

Dr. Stiles, after referring to the claims put forward as to the power and duty of the State to participate in the management of the College, says that

"The Corporation, considering these public Ideas, & the preparation of the public mind, after an Irritation of 50 years or half a Century, for Pacification & Harmony, judged that there was no prospect perhaps for another century that the Civilians would feel disposed to try another Demand upon the Corporation for augmenting the No. of Civilians into a Majority—& that before that Time probably Moses & Aaron would be so cemented, harmonized & connected & consolidated in Union, that the very Civilians themselves would not be disposed to enterprize such a project, that on the whole the prospect was that this Proportion of Civilians & Ministers would be lasting—and that as the latter have the Majority & power of Self-perpetuation, it must be their own Unfaithfulness, if Religion and every Sacerdotal Interest should not be permanently secured."†

The first meeting of the new board was held at the following Commencement, and was largely occupied by discussing questions of precedence, as between the new and old members.‡ It was signalized, however, by the bestowal of the degree of Doctor of Divinity on an Episcopal clergyman; the first instance of such a recognition in the history of the College. At the next session of the corporation, every one of the eight

* Vol. xiv. p. 279. † Vol. xiv. p. 290. ‡ Ibid., pp. 325–327.

laymen was present, and but seven of the clerical Fellows; but as the novelty wore off, the attendance of the State officials became more and more irregular, until, at last, after a desire for representation on the part of many of the Alumni of the College had been shown on various occasions, Governor Jewell, in 1871, proposed to the legislature the substitution of six of the graduates for the six Senators, who had succeeded in 1819 to the six Assistants; and this change was accomplished by the Acts of 1871 and 1872, with almost universal satisfaction.

We find the corporation of Yale College, therefore, to be made up, under the existing laws, of nineteen persons: the President and eighteen Fellows.

Of these eighteen, two are constituted such *ex officio*, the Governor and Lieutenant-Governor; six must have received degrees from the College, and are elected for terms of six years by their fellow graduates; and ten hold office during good behavior, and elect their own successors.

All the eighteen can vote at the election of a President. This right of laymen to participate in the election of the President and of the Professors, including the Professor of Divinity, was one of the objections seriously considered by the corporation, before accepting the Act of 1792. President Stiles writes in his diary that "it was the Intention of the Framers of this Act that the Presid^{t} shld be elected by the joynt Board."* After the Act was accepted, some one suggested to him that perhaps its terms were not as clear as they were meant to be on this point, so that the election might still be kept in the hands of the old board; but though he states the arguments for this view at length, they were evidently not very satisfactory to his mind, and would be, I think, still less so, to any one more accustomed to the construction of legal instruments.

No qualifications, as respects eligibility to the presidency, are, so far as I can see, imposed by the existing laws, nor any for the position of Fellow, except as to the six elected by the graduates of the university, who must themselves be graduates of one of its departments.

* Vol. xiv, p. 307.

The original Trustees were necessarily ministers of the gospel, living in Connecticut, by the express terms of the Acts of 1701 and 1723; though they were not required to be of the Congregational faith. Any Protestant minister could have been elected to the board, and Rector Cutler evidently did not deem his own intention to take orders in the Church of England, as incompatible with his right to remain in office.

But after 1745 there were no longer any Trustees. At the request of those then holding that position, the office was abolished, and replaced by that of Fellow of a corporation, clothed with different powers and limitations. The religious qualification attached only to the Trustees, and when they disappeared, that, in my opinion, disappeared with them.

The same, of course, would be true, also, as respects the President.

It is doubtful if the constitution of the College ever required that the Rector should be a minister. Dr. Benjamin Gale, of the Class of 1733, asserted in print in 1755, in his "*Reply to a Pamphlet entitled 'The Answer of the Friend in the West, &c.,' with a Prefatory Address to the Freemen of His Majesty's English Colony of Connecticut, By A. Z.,*" that at the time of the election of Rector Clap, in 1739, several of the Trustees voted for a layman, the Hon. Daniel Edwards,* of the Class of 1720. Dr. Gale's information probably came from his father-in-law, Rev. Jared Eliot, the senior Trustee, and the statement was never questioned in any of the controversial pamphlets of the day.

"I take it for granted," he goes on to say in the same connection,† "that there is Nothing in the Nature of *Yale College*, or in their Charter, that restrains the Trustees in their Choice of a President to the Priestly Order."

But whether or not the Rector was necessarily to be a minister, it would certainly seem that the requirement passed away with the office. The President, *primus inter pares*, the head of the corporation, is a very different personage from the humble Rector, whose tenure, if appointed, was no higher than that of

* Page 42. † Page 42.

a tutor or a steward, and whose very office was one, which the Trustees could abolish at pleasure, if they preferred to call the chief instructor by any other name, or to have no chief instructor, at all.

The Rector's proper work was to teach: the President's is to govern. He is not required by the charter to give any instruction. He may, and the Fellows may, as for many years the Fellows of Harvard did, but neither he, nor they, are bound to do so.

Rector Clap had sat as a member of the board of Trustees; but they had, at each meeting, elected their own moderator.* President Clap was the standing and rightful presiding officer, at all meetings of the President and Fellows, and when the corporators were equally divided, he was given a casting vote.

The Trustees could grant degrees only to their students in course: under the new charter honorary degrees could also be conferred, and all were to be granted by the President, with the consent of the Fellows. In other words, a majority of the Trustees could confer degrees, without reference to the consent of the Rector; but no degree, it appears, can now be granted except by the President, and with his assent.

It may be said that the charter of 1745 should be regarded as a confirmation of the former legislation, and as repealing nothing which is not necessarily inconsistent with its own provisions; and so that the ecclesiastical qualification of the former authorities of the College continued to attach to their successors. The title is "An ACT for the more full and complete Establishment of YALE COLLEGE in NEW HAVEN and for enlarging the powers and Privileges thereof;" and the recital in the preamble, of the petition of the present Trustees states that they ask that the Collegiate School at New Haven,

"with all the Rights, Powers, Privileges and Interests thereof, may be confirmed, and that such other additional Powers and Privileges may be granted as shall be necessary for the Ordering and Managing the said School in the most advantageous and beneficial Manner for the promoting all good Literature in the present and succeeding Generations."

* Kingsley's Yale Book, vol. i, p. 178.

But the title and preamble of a statute are of little consequence, unless to aid in ascertaining the intent of the legislature, when the statute leaves it doubtful. If the statute is plain and precise, it cannot be enlarged by any reference to either.* In the case before us, the Act (Sec. 2) does expressly "confirm" to the new corporation all property previously granted to the school; and grants to it (Sec. 8) the management of the College in ample terms. But here it stops, so far as a perpetuation of the old *régime* is concerned. The language as to the election of new corporators (Sec. 6) is simple and unrestricted:

"The President and Fellows of the said College and their Successors, in any of their meetings assembled as aforesaid, shall and may from Time to Time, as Occasion shall require, elect and appoint a President or Fellow, in the room and place of any President or Fellow who shall die, resign, or be removed from his Office, Place, or Trust."

As no test of eligibility for a corporator is here imposed, how can one be implied from the former test for the office of Trustee, which went out of existence when the charter was granted?

It is no unusual thing to reconstruct a corporation by a new charter into a new being, or to create a corporation as the successor of an unincorporated association, previously existing. Few sessions of our General Assembly pass, without such legislation. In the last volume of our Special Laws (vol. viii, from 1876 to 1880), may be found seventeen such charters: including those of the New Haven Club (page 24); the Putnam Phalanx (p. 88); the Quinnipiac Club (p. 140); the Harwinton Agricultural Society (p. 143); the Union Agricultural Society (p. 144); the Century Club (p. 147); the Greenwich Reading Room and Library Association (p. 182); the Farmers and Mechanics Association (p. 221); the Trustees of the Providence Conference of the Methodist Episcopal Church (p. 240); the Pequatuck Agricultural Association of Bristol (p. 258); the Meriden Club (p. 264); the Colchester Library Association (p. 280); the Watertown Library Association (p. 282); the

* Sedgwick on the Construction of Statutory Law, etc., pp. 40, 43.

[illegible] Agricultural Society (p. 368); the Reading Room [illegible] Milford (p. 373); the Scattergood Mission [illegible]; and the New Milford Agricultural Society [illegible]. Many of these Acts recognize the pre-existing association as [illegible], and confirm or transfer it to the new corporation. But does any one suppose that any of the rules of the association, unless expressly or tacitly re-adopted after, or re-[illegible] in the Act of incorporation, continue obligatory?

So far as the President is concerned, it may be added, the only fact that the Rector must have been a clergyman was [illegible] implication from his being *ex officio*, a Trustee. But the President is not *ex officio*, a Fellow. He is a member of the corporation as President, but he is not a Fellow, at all.

We must ask, next, whether there is anything outside of the actual legislation of Connecticut, to which we are bound to look to ascertain whether Yale College has any ecclesiastical Constitution.

If it was founded by the ten ministers at Branford, and they had at the time laid down any particular rules for its government, these might, perhaps, be still of force, if not repugnant to the Charter or the laws of the land. And had not the Act of 1792 been passed, at their instance, the heirs of those founders might have retained power to act as visitors of the College, and exercise such a supervision of its affairs as to assure obedience to those rules.

But the Act of 1701 had the effect to cut off any such right [illegible], and to merge the original founders in the Trustees [illegible] School, and their successors.*

[illegible] the present corporation has any property in its [illegible] subject to any trust imposed by the donor, it is [illegible] the trust, and the State's Attorney has the [illegible] by an appropriate action. Assuming now [illegible] has in its hands property given before the [illegible] that property impressed with any particular

[illegible] *Academic School*, 6 Conn. Reports, 544. *Pro-*[illegible] *School House vs. Post*, 31 Conn. Rep., 258.

trust or destination? Undoubtedly; but undoubtedly also it was, so far as we now have any information, given simply to found a College or Collegiate School.

Now a College could only be founded by the King's license.* This doctrine was firmly established; so firmly that it was even applied against the King, in many cases, during the era of the suppression of monasteries and secularization of ecclesiastical possessions. By a statute of Edward VI (1 E. VI, c. xiv) all manner of Colleges were given to the King. A lawsuit arose between the Crown and Lord Dacres as to the right to the so-called College of Graystocke.† "Pope Urban, at the request of Ralph, Baron of Greystock" (I quote from the Reports of Sir Edward Coke), "founded a College of a Master and Six Priests resident at Greystock, and assign'd to Each of the Priests 5 Marks *per annum*, besides their Bed and Chamber, and the Master 40 l. *per ann'*, and it was certified into the Book of First Fruits and Tenths, *Rector' & Colleg' de Greyst.*, and this College was *in esse* within 5 Years before the said Act; and it was resolv'd *by the Justices* that this reputative College was not given to the King by the said Act of 1 E. 6, because it wanted a lawful Beginning, and the Countenance also of a lawful Commencement, for the Pope can't found or incorporate a College within this Realm, nor assign nor licence others to assign temporal Livings to it; but it ought to be done by the King himself, and by no other—*Nomen non sufficit, si res non sit de jure aut de facto*—and it is much the same as if one of his own Head had erected and founded a Chauntry, without Licence or Authority derived from the King."‡

We are bound to presume that the founders of Yale College intended to found a lawful College, and to obtain a proper license from the King, or those claiming to act by his authority; and when we find that, in fact, they did make prompt application for such a license, and obtained it, we are plainly

* Jacobs' Law Dict. *in verb.*

† *Rex* vs. *Lord Dacres*, 1 Dyer's Reports, 81, a.

‡ *Adams & Lambert's Case*, 4 Reports, 107.

to look to the tenor of this license for the legal evidence of their original design. I have already mentioned its terms, so far as this point is concerned. The object of the school was clearly expressed. It was to be one

"wherin youth may be instructed in the Arts & Sciences, who thorough the blessing of Almighty God may be fitted for Publick employment both in Church & Civil State."

But it was not, as Sewall and Addington would have had it, to be bound down to teach any particular kind of theology, or indeed to teach theology at all, except so far as its Trustees might from time to time think proper.

I am aware that these views are opposed to what has become a sort of traditional belief. Probably nine out of ten of the graduates of Yale think to-day that the law requires that the President and ten of the Fellows shall be orthodox Congregational ministers, living in Connecticut..

But such was by no means the opinion of the alumni, or of the public, when the charter was granted.

In Dr. Gale's pamphlet already alluded to, he takes up,* a citation by President Clap, in his *Religious Constitution of Colleges, especially of Yale College*, etc.,† from Stillingfleet, "that a Corporation takes it's Denomination from the greater Number," and says that this gives the President's argument no support, since

"t'is obvious that the greater Number in all Colleges are not Ecclesiasticks. As but a Small Part of the Students are design'd for the Work of the Gospel Ministry, so but a Small Part of the Governors and Regents of some Colleges are Gospel Ministers.

"A College hath been lately founded and incorporated at *New York*, and by far the greater Part of the Governors of it are *Lay-Men:* And the present Governors of our College may be succeeded by *Lay-Men*, if it shall so please that venerable Body to fill up Vacancies, as they shall fall: For there is nothing in the Charter that determines they must be Men in holy Orders."

So in a "*Letter to a Friend, wherein some free Thoughts are offered on the Subject of The Rev. Mr. Noyes's Proposed*

*p. 44. †p. 4.

Examination by the Corporation of Yale College," etc., attributed to the Rev. William Hart of Saybrook, of the Class of 1732, and printed in 1757, the author says* in reference to the claim of the President that "Colleges are Societies of Ministers,"

"Some may be so perhaps. But 'tis most certain that *all* are not so. *Yale College*, in particular, is not. The President is a Minister, but he does not preside there in the Character of a Minister, but in that of the *legal* Head and Governor of that School. . . . . The Fellows and Overseers of the College are Ministers of the Church. But they don't take the oversight and direction of the College upon themselves, by virtue of their being *Ministers:* but by virtue of a *civil* Appointment and Authority, decreed to them by the *Charter of the Government*. . . . . And there is no one Act, *peculiar* to their Office, as Trustees or *Fellows*, but what a *Layman* might perform with as much Propriety as they, if he was invested with the same Office or Trust. There is nothing in the Nature of that Office, which confines it to *Clergymen:* nor in the Charter of the Assembly: by which the College is incorporated, and invested with *all* its Powers: And almost all the Colleges in *America*, have *Laymen* joined with *Clergymen*, in the Oversight and Government of them. And I believe most People begin to think it would be best for our College and the whole Community, if it was so at *Yale-College* too."

These public assertions by graduates of the College, that the charter imposed no ecclesiastical qualifications, and that none existed, were allowed to pass [illegible] by the pamphleteers on the other side of the controversy which *elicited them.*† They went to the root of [illegible] *strongest arguments put* forward by President Clap and his supporters. That they were not, at once, denounced and denied is *convincing* evidence that they were admitted to be true. The claim, indeed, that the Fellows of the College must necessarily be ministers, was, so far as I can learn, first put forward *about* a hundred years ago by those who were *opposing* the movement which led in 1792 to the election of the Governor, Lieutenant-Governor, and six Assistants into the corporation. It is mentioned and fully answered by Hon. Samuel W. Dana, of

* p. 24.

† I make this statement [illegible] the *result* of my own reading, but on the authority of a distinguished *historical scholar*, whose acquaintance with our Colonial literature is probably more thorough than that of any other person now living.

the Class of 1775, afterward a Senator of the United States from Connecticut, in his anonymous tract entitled, *Yale College, subject to the General Assembly*, New Haven, 1784. After referring to the fact that by the charter of 1745, "power is given to elect new members, without restriction as to any age, or profession,"* he says that the legislature retain the right

"(if need be), to change the mode of election and succession; and what may be thought more than all, (without which it can never hope to be prosperous or happy), to form the College into an immediate connexion with the government, by constituting a part of the corporation, or governing power from gentlemen of the civil order, in such manner as their wisdom shall dictate to be best.

"Here (as has been usual), we expect a loud complaint. 'This would be in direct violation of the sacred will of the founders and donors. Their will was (and it ought to be religiously observed) that for preserving orthodoxy in religion, none but a minister of the gospel should ever be suffered to be a member of the corporation. If civilians be admitted to any part in the administration, what must become of orthodoxy in religion, and the godly intention of our forefathers to promote it?'

"Exclamations of this tenor and import have frequently been made, and the world has been sufficiently amused—at least such as have not had opportunity to investigate the truth. But is orthodoxy appropriated to the respectable order of the clergy, as their exclusive right?† . . But where can you find the evidence of any such will of donors, or of any grant of Assembly, that clergymen are to have the sole guardianship of orthodoxy, and that none but ministers may be members of the corporation?‡ . . . . 'But the first charter granted and established the right of the clergy, so that none others can be admitted as members.'§

"You mistake. The Act granted a power of election, but *limited* that power to the election of ministers only. The clause which you call a grant is a RESTRICTION; and restriction of power can never be a grant of a right. The legislative power may take off any restriction when they please. This was actually done by a subsequent Act, in respect of the age of the member elect. By the first Act, the age was limited to forty years. A subsequent Act took off the restriction, and made a minister eligible at the age of thirty.

"'But this was done for the benefit of the College.'

"True. And may they not make any other person, as well as a minister, eligible at any age, for the benefit of the College? Certainly: They have in fact done it, by the Act which you call the Second Charter. For therein they give a power to elect, without adding any words of limitation."

* p. 20. † p. 28. ‡ p. 29. § p. 31.

It will be observed that Mr. Dana here maintains two positions:

1. That the existing Fellows, who were then all clergymen, could, under the charter of 1745, elect laymen as their successors.

2. That the legislature of the State could compel the introduction of laymen, by an amendment of the charter.

At that time the Constitution of the United States had not been framed, and therefore the obstacle to amending charters, recognized in the *Dartmouth College* case, did not exist.

In the century that has passed since these discussions were set at rest by the Act of 1792, many of the positions, then familiar to all who were interested in the constitution of the corporation, have been forgotten, and it has been natural for us of the present generation to confound the legal obligations of the College in this respect, with the rules and precedents proceeding from its management throughout a long history.

The ten original Trustees believed, no less than Judge Sewall, that the Westminster Confession and Ames' *Medulla Theologiæ* were the best authorities on dogmatic theology then existing, and intended no less that they should be forthwith introduced as text books. They did this, indeed, by their very first action, under the charter.*

But they were wiser men in their generation than their Boston advisers. They knew that a time might come when these books might be replaced by better, and they proposed to keep to themselves and their successors the power to change text-books and studies at their best discretion.

How many, I wonder, of the Fellows of Yale College now in office have ever read Ames' *Medulla* or *Cases of Conscience?* His Latin is of that kind so delightful to an American reader, where the English idiom and mode of arranging the words are well preserved, and, I dare say, would suit many a Freshman better than his Cicero. But I fear the professor would feel ill at ease in expounding some of the propositions laid down as incontrovertible in the *Cases of Conscience.*

* Baldwin's Annals of Yale College, p. 21.

In his chapter on "Heresie," the author asks whether heretics are to be punished by the civil magistrate; and answers that if they

"be manifestly knowne and publikely hurtfull, they are to be restrained of the Magistrate by publike power. And if they be manifestly blasphemous, and pertenancious, and stubborne in those blasphemies, may suffer capitall punishment. For that Law, *Lev.* 24. 15, 16, although it bind not Christians as it is a Law, yet as it is a doctrine comming from God, it doth belong to the direction of Christians in cases of the like nature. When, therefore, the glory of God and the Safetie of the Church requireth such a punishment, it may, and if other remedies have been used in vain, it ought to be inflicted by the Christian Magistrate."*

A game of cards, he says, is in its own nature unlawful, because it is a kind of drawing lots, and to draw lots is properly to appeal to the special direction of God:

"*Quia non debet illud in ludum verti, quod sua natura singularem respectum habet ad specialem Dei providentiam. At vero sors ex sua natura quaestionis determinationem exspectat à speciali Dei providentia.*"

Public lotteries, however,

"might haply be so ordered that they might be lawfull. Namely, if there were any need of a contribution to some pious use."†

Under the head of "Charity towards our Neighbor," he says,

"It is lawfull to wish a temporall ill to some for the good of others. As if any man be a desperate corrupter of others, it is lawfull to wish him taken from the earth, for feare he should undoe others as well as himselfe."‡

Ames' *Medulla Theologiæ* contains much less that is objectionable than his *Cases of Conscience*, and was taught in College as late as 1779, long after the other work had been thrown aside.

The Westminster Assembly's Catechism is a book less unfa-

* Conscience with the Power, and Cases thereof. Translated. London Ed., 1643. Book iv, ch. iv, p. 12.

† Ibid., chap. xxiii, p. 60: Cap. 23, v, vi, of the Amsterdam edition in Latin, of 1635.

‡ Id., Book v, chap. vii, p. 149.

miliar to modern theology; but who would now compel all the students in the Academical Department to learn it by rote, for weekly recitations, from the original Latin? It was, indeed, found, more than a hundred years ago, intolerably irksome to require the President, Professors, and Tutors, even, to assent to the Westminster Catechism and Confession of Faith. The Saybrook Platform was substituted for them in 1778, and all religious tests for College officers were abrogated by the corporation in 1823.*

Thus, in the language of Professor Kingsley,

"The College was left on the basis where its founders placed it; the care and vigilance of the president and fellows, especially in selecting proper persons to fill vacancies in their own body, and in the several offices of instruction."†

I do not think that it can be said that this power of selection —and rejection—has been unfairly used. The present instructors in Yale College represent all the leading religious denominations, including the Roman Catholic; and very possibly some who belong to no denomination at all; and while the time was when an English Archbishop complained that there was a College in New England (meaning Yale) where an Episcopal student was fined for going on a Sunday to hear his own father preach,‡ it is now many years since any student has been compelled to attend the Sunday services in the College Chapel, whose connections have led him to prefer any other form of worship attended in the city, whether Jewish or Christian. Indeed, in the lecture-room of the Theological Department, might have been seen, a few years ago, a Jewish Rabbi, seated among other students, with his hat on, as a mark, not of indignity, but of respect, and engaged with them in receiving instruction from the Professor of Hebrew, in order that he might the better teach in a Jewish synagogue.

* Woolsey's Hist. Disc., p. 40. It was done at a special meeting at Hartford, and probably with reference to the movement then on foot to secure a charter for Washington (Trinity) College. See Dr. Beardsley's Historical Address on the twenty-fifth anniversary of Trinity College, p. 11.

† Biblical Repository, vol. xix, p. 200.

‡ Beardsley's Historical Address, p. 7, note.

Of the Presidents of Yale College, all have been ordained Congregational ministers, when elected, with two exceptions. I refer to President Day and President Woolsey, and each of them had been licensed to preach soon after leaving College, though for twenty years he had been engaged in other pursuits. Both these gentlemen were, at the request of the corporation, ordained to the work of the ministry before entering on the duties of their office.

It is obvious that in certain ways a College President can exercise a more direct influence over the young men under his care, if he has the authority of an ecclesiastical character, than if he be a layman; and it is, of course, equally obvious that in other ways he might find his influence narrowed, both in College and outside of it. Hitherto the corporation has believed that the balance of advantage lay in uniting the functions of president and preacher.

As it was put by one of the oldest Fellows, in his charge delivered at the ordination of President Woolsey:

"We do not make you a minister that you may be President of the College, but that, as President of the College, you may do the work which belongs to a minister of Christ."*

Up to the present time, the successors of the ten original Fellows have in every case been Congregational ministers, living in Connecticut, though they have not always been above question as to their orthodoxy. Two or more of them, in President Clap's time of trouble, were, says Dr. Trumbull,† supposed to be "opposed to the doctrines contained in the confession of faith, and in the catechism; especially to the doctrines of the decrees, of the divine sovereignty, of election, original sin, regeneration by the supernatural influence of the divine Spirit, and the perseverance of the saints."

One of them, Rev. Joseph Noyes of the First Church in New Haven, had even been formally required by the other members of the corporation to submit to an examination before

* Discourses and Addresses at the Ordination of Rev. Theodore Dwight Woolsey, LL.D., etc., p. 49.

† Hist. of Conn., vol. ii, p. 332.

them as to his religious opinions, and had refused to do so. It is worth remark that in his formal statement of the reasons for this refusal, drawn up with the advice of counsel, he relies upon the terms of the charter of 1745, as decisive. Referring to the action of the corporation, upon which the call for his examination was founded, he says:

"7. The corporation have no right or power to make such a law or rule, or to act upon it. Whatever power the corporation have, as legislators, they are invested with by charter, and have therefore just so much power as the charter gives them and no more—which, in general, is only to make laws respecting the ordering and governing the college, but have no power to make any laws respecting the removal of a member of the corporation; this matter being specially provided for by charter itself, and a member must be removed for reasons assigned in the charter, or not removed at all—which are unfaithfulness, default, or incapacity only.

"8. I have taken the oaths and subscribed the declaration, etc., as required by the charter (and is the only thing required therein), and have fully given as great security as either the king or any of his subjects, or the government of any of its members do require to their sustaining any office for which they are otherwise fit and appointed to serve."*

The corporation did not press the matter further; but whether because they thought best to avoid the scandal of a public inquiry, or because they were convinced that they had no jurisdiction, their records do not disclose.

The argument of Mr. Noyes obviously goes to the length (and, I think, with perfect justice) of asserting that a change of religious belief on the part of a Fellow, though such as to make him no longer an orthodox Congregational minister, or no longer a minister at all, would not affect his right to continue in office.

In the case of each of the younger Colleges of Connecticut, the State has made it an express condition of its charter, that its authorities

"shall not make the religious tenets of any person a condition of admission to any privilege in the said College, and that no President or Professor or other officer shall be made ineligible for or by reason of any

* Kingsley's Yale Book, vol. i, p. 177, note.

religious tenet that he may profess, or be compelled by any by-law or otherwise, to subscribe to any religious test whatsoever."*

I have called this a paper on the Ecclesiastical Constitution of Yale College; but, if my conclusions are correct, it has no such constitution. It has none, at least, possessing the character and force of law. And yet, in another sense, it has one; has it by virtue of the pious wishes of its founders, the views of those whom they named for their successors, and the precedents and traditions of nearly two hundred years. Great Britain has no other constitution than one like this. When her people made up their minds that her government should be administered on Protestant principles, they found the surest way was not to rely on Protestant legislation at the hands of a Roman Catholic monarch, but to turn the Stuarts out and put the Hanoverians in. And so in lesser spheres, rules and statutes for the support of religion are of little use, unless administered by those in sympathy with them.

Take, for instance, the first professorship ever established in America; that of the Hollis Professor of Divinity at Harvard, which dates from 1722.

Mr. Hollis, the founder, prescribed certain perpetual rules, among which were that the incumbent should be of the Congregational, Presbyterian, or Baptist denomination; and of sound or orthodox principles; that he should instruct the students in the several parts of theology, by reading a system of positive, and a course of controversial divinity, beginning always with a short prayer; and that he should read publicly once a week upon divinity, either positive, controversial, or casuistical.†

In process of time the government of Harvard University fell into the hands of men whose views on theology were not such as in Mr. Hollis' time were known as "orthodox."

Dr. Henry Ware had been appointed to the Hollis Professorship in 1805, and was active in the controversies which led

* Charter of Washington (now Trinity) College (1823), 1 Private Laws, 469. Charter of Wesleyan University (1831), 1 Private Laws, 470.

† Quincy's Hist. of Harv. Univ., i, pp. 248, 534. Holmes' Am. Annals, ii, p. 106.

to the rise of the Unitarian denomination. He had early in the century a small class of divinity students around him, and on the organization of the Divinity School in 1819, was made one of its Faculty.* In 1840, he resigned his office, and from that time to this no successor has been appointed, the income of the fund for the support of this chair having been added annually to the principal.† Meanwhile another professorship "of the Heart, and of the Moral, Physical, and Christian Life" was founded, the only qualifications for the incumbent being that he "shall be of the Christian religion, and a Master of Arts, bearing the character of a learned, pious, and honest man," and to this Plummer Professor has been practically confided all the religious instruction given outside of the Divinity School. The chair was long filled by Dr. Peabody, of the Unitarian denomination, and has been lately offered to Rev. Phillips Brooks of the Protestant Episcopal Church, with which a recent census shows that a larger number of the students are now connected, than with any other.

Of what good were Mr. Hollis' precise rules, confirmed by a formal instrument signed in 1725 by the President and Fellows of the College, against the simple non-action of their successors, by whom the chair has been left unfilled for over forty years, and the field virtually given to another?

We may even ask another question. Ought the College government, in this generation, to have compelled their students to attend weekly lectures on controversial divinity, from a denominational stand-point? It would indeed have been possible to have the lectures, and leave the attendance optional, but it is safe to say that the professor would probably have often talked to empty benches.

But if rules are of little value if executed by those who are not in accord with them, so, on the other hand, there is small

* *Harvard College* vs. *Society for Promoting Theological Education*, 3 Gray's Reports, 280, 286, 288.

† The endowment, originally yielding only £80 a year, is still not much over $30,000, and so long as the chair was filled, the salary was eked out by a grant from the Colony, or by the other funds of the College.

need of rules to perpetuate a policy among men who are identified with the principles on which that policy rests.

We need not look to the history of Yale, alone, to show how true this is.

The charter of Trinity College, as we have seen, prohibits any religious test of eligibility as to president or officer, but the original and self-perpetuating Trustees were almost all members of the Protestant Episcopal Church. A few months after the grant of the charter, these Trustees sent an agent to England to ask for aid, and in his letter of credentials I find these passages:

"An occasion has arrived, when the Episcopal Church in the United States once more looks, with filial solicitude, to her parent Church in Great Britain. Planted in the midst of Dissenters from her ministry and worship, and opposed by many prejudices, numerous difficulties have heretofore retarded her progress: yet fostered originally by the venerable *Society for the Propagation of the Gospel in Foreign Parts*, and prospered by the divine blessing, she has now attained a respectable rank among the other Reformed Churches in our country. Still she experiences a formidable obstacle to her advancement in the necessity of educating her youth in seminaries under the influence and direction of other denominations of Christians.

"Within the present year, however, an Episcopal College has received a charter from the legislature of the State of Connecticut, to be called by the name of Washington College."

Here a note is added, at the foot of the page, saying:

"It was necessary that *some* name should be given it in the charter. Should some magnificent benefactor to the institution be found, it is intended to honour it with his name."

"We earnestly hope," the letter continues, "that your aid will enable us to place this Episcopal College upon an equal footing with the other literary institutions amongst us. You will readily conceive that no measures could be better calculated to promote the prosperity of the Church in this country, and to oppose an effectual barrier to those spreading errors, which are dividing and destroying the other religious communions.

"Between nations, as among individuals, *a common religion* is a strong bond of union. We beg leave to add that *the best friends which Great Britain has in America will be found among the members of the Episcopal Church;* and to express our conviction, that everything which conduces to the extension of this church, will be found to strengthen the bands of relationship and amity which cement the two countries."*

*Christian Journal for January, 1824, p. 23.

Does any one suppose that, with the board of Trustees in whose behalf that letter was sent, over the signatures of Bishop Brownell as President and Dr. Croswell as Secretary, Trinity College needed the word "Episcopalian" written in its charter?

And more: the principles and polity of an ecclesiastical body are better transmitted, where they are left free to be developed or limited by those to whose hands they may be entrusted, as the times change, and as modes of thought and of expression change.

It has, I am sure, been found so, in the case of Yale. She has grown great because she was free. Any policy of the past is best perpetuated, if maintained in the spirit rather than the letter.

The animating spirit of the Connecticut clergy, two hundred years ago, when the Royal Commissioners, sent out to view New England, reported (1666) that the planters had "a scholar to their minister in every town or village,"* was a determination, resting on the best learning of the day, to read the Bible by the light of their own judgment, and a belief that a Christian church should submit to no ecclesiastical domination. It was for this freedom of opinion and Christian life, that they had given up home and country. Undoubtedly, as time went on, and they found the civil power largely in their hands, they sometimes abused it. They held councils and formulated dogmas, which were very properly a law to themselves, but which they also most unwisely sought to make a law for all.

It is the proper office of their successors to maintain the original standard of the right of independent investigation in religious doctrine, and of teaching only what you believe and because you believe it, even if, at times, many of the best of the fathers forgot their first principles.

In this way, Yale College has ever perpetuated what its founders desired to uphold, more surely than if they had tried to bind it down by unyielding rules.

It is a Christian College because it is directed by Christian men in a Christian community. It is not and cannot be a sec-

* Palfrey's Hist. of New England, iii, p. 37.